













# THE STUDENT'S INDIAN LAW CODE

CONTAINING

ALL THE REGULATIONS AND ACTS, AS AMENDED  
UP TO DATE, OF THE INDIAN AND LOCAL  
LEGISLATURES INCLUDED IN  
THE UNIVERSITY  
B. L. COURSE

WITH CALCUTTA UNIVERSITY QUESTIONS UP TO DATE.

COMPILED BY

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# TABLE OF CONTENTS.

Act XLV of 1860. The Indian Penal Code	...	...	1 to 110
„ X of 1882. The Code of Criminal Procedure	...	111	„ 360
Regulation I of 1793. The Permanent Settlement	...	361	„ 368
„ VIII of 1793. Rules for the Decennial Settlement	369	„	374
„ XIX of 1793. Rules regarding non-Badshahee Lakhraj Grants	...	374	„ 380
„ XXXVII of 1793. Rules regarding Badshahee Lakhraj Grants	...	380	„ 385
„ VIII of 1819. Putny Sale Law	...	385	„ 397
„ XI of 1825. Churs and Accretions	...	397	„ 399
Act VIII of 1890. The Guardian and Wards Act	...	401	„ 404
„ XI of 1859. And Act VII of 1868. The Revenue Sale Law...	...	405	„ 427
„ VII of 1880 B. C. Public Demands Recovery Act	...	428a	„ 428b
„ VII of 1889. The Certificate Act	...	429	„ 432
„ X of 1865. The Indian Succession Act	...	433	„ 508
„ XXI of 1870. The Hindu Wills Act	...	509	„ 510
„ I of 1872. The Indian Evidence Act	...	511	„ 560
„ III of 1872. The Civil Marriage Act	...	561	„ 567
„ IX of 1872. The Indian Contract Act	...	569	„ 641
„ IV of 1893. Partition Act	...	643	„ 645
„ IX of 1875. The Indian Majority Act	...	647	„ 648
„ VIII of 1876 (B. C.) Estates Partition Act	...	649	„ 687
„ I of 1877. The Specific Relief Act	...	689	„ 718
„ III of 1877. The Indian Registration Act	...	719	„ 744
„ XV of 1877. The Indian Limitation Act	...	745	„ 773
„ IX of 1879 (B. C.) and Act III of 1881 (B. C.) The Court of Wards Act	...	775	„ 790
„ V of 1881. The Probate and Administration Act	...	791	„ 819
„ VII of 1870. The Court Fees Act	...	821	„ 854
„ IV of 1882. The Transfer of Property Act...	...	829	„ 874
„ XIV of 1882. The Code of Civil Procedure	...	875	„ 1017
„ VIII of 1885. The Bengal Tenancy Act	...	1019	„ 1077
Extracts from Colebrooke's Daya Bhaga	...	1079	„ 1126
-----Mitacshara	...	1127	„ 1154
Al Serejiyyah	...	1155	„ 1173
Extracts from Macnaghten's Mohamedan Law	...	1175	„ 1191



## PREFACE.



THIS compilation is an attempt to place before Law students and the public generally a corrected text of the various Regulations and enactments from 1793 down to the present time, included in the University Curriculum for the B. L. Degree Examination. Most of those Acts of which portions only are included in the B. L. Course have been given in full in the interests of the general public. Several important Acts, such as the Revenue Sale Law, the Indian Penal Code, the Code of Criminal Procedure and the Code of Civil Procedure, have undergone material alterations since the dates of their enactments. It is hoped that a corrected text of these laws compiled in the form of a handy work will be found a great convenience to those for whom it is intended. References to the amending enactments have been ~~been~~ given in all cases in the shape of foot notes. My best acknowledgments are due to my friend Raja Peary Mohun Mookerjee C S I for the valuable help he has given me in this compilation.

## PREFACE TO THE SECOND EDITION.

The present edition carries the amendments up to date. The old Certificate Act (XXVII of 1860) has been replaced by the Succession Certificate Act of 1889, Act XL of 1858 has been replaced by the Guardians and Wards Act 1890, and Act VII of 1880 B. C. has been added. The several alterations made in different sections of the Code of Civil Procedure and other Acts have been incorporated, and care has been taken to correct some at least of the printing mistakes which crept into the first edition.

PRAN NATH PANDIT.





## Preface to the third Edition.

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IN the present edition the several amendments made by subsequent Acts in the Code of Criminal Procedure, the Evidence Act, the Registration Act, the Code of Civil Procedure and other enactments included in the B. L. Course have been embodied and the Partition Act of 1893, has been added. At the suggestion of the Publishers and with <sup>a</sup>view to make the compilation more useful to legal practitioners, the Court Fees Act as amended up to date has also been added.

PEARY MOHUN MOOKERJI.



## ERRATA AND ADDENDA.

- Page 1. Section 1. Omit the words from "except" to the end of the section, (Act XII of 1891.)
- .. 3. Omit the same words at the top of the page.
- .. 27. After section 138 insert the following section, (see section 79 Act XIV of 1887.)
- "138A. The foregoing sections of this Chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen."
- .. 137. Omit clause (b) of section 1 which has been repealed by Act XIII of 1889.
- .. 151. In section 54 after the word "Navy" insert the words "or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service." (See Section 78, Act XIV of 1887.)
- .. 200. After the word Punjab insert the words "the Court of the Recorder of Rangoon." (See Act XI of 1889.)
- .. 262. To section 555 add a note to the effect "see Act XIII of 1889 excluding Cantonment Magistrates from the operation of this section."
- .. 284. After section 216 add the following (see Act III of 1894.)
- .. 216A. Harbouring robbers or dacoits. 

Ditto, ditto, ditto,	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of 1st Class.
----------------------	---	---
- .. 494. In section 244 for the words "and the petitioner is the executor therein named" substitute the following, (see Act VI of 1889), "the amount of assets which are likely to come to the petitioner's hands, and  
"that the petitioner is the executor named in the will" ;
- .. 504. In section 308 insert the words "or by whose District Delegate" after the words "by whom."
- .. 515. Line 2nd, for "statement" read "statements,"  
Line 6th, insert the word "all" before the word "such,"  
Section 5, insert the word "no" before the word "others."
- .. 527. Section 33, line 8th. for the first word "of" read "if."
- .. 723. Section 9, omit the 2nd paragraph which has been repealed by Act XIII of 1889.
- .. 755. Omit the whole of the First Schedule which has been repealed by Act XII of 1891.
- .. 759. Description of suit 43, after the figure "321" add the words and figures "or under the Probate and Administration Act, 1881, section 139 or section 140," (see Act V of 1881.)
- .. 768. Description of suit 142, line 3rd for the first word "the" read "in."  
After Description suit 149 insert the word "Appeals."

Page 769. After No. 160 insert the following. (See sec. 36, Act 1X of 1887.)

- |   |                  |   |
|---|------------------|---|
| <p>„ 160A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes, when exercising that jurisdiction.</p> | <p>Ditto ...</p> | <p>The date of the decree or order.</p> |
|---|------------------|---|
- „ 771. In No. 173 insert “No. 160A and” before the word and figures “No. 162,” (see Act 1X of 1887.)
- „ 883. Line 1st for the figure “286” read “386.”
- „ 887. Section 22, Last word, for “pooceed” read “proceed.”
- „ 896. Section 62, Line 3rd, for “porduce” read “produce.”
- “i & ii. The second Schedule of the Code of Civil Procedure (see Act X of 1888.)

Against Chapter I add the words “and the last para. of section 14.”

Against Chapter XIX after the figures “290” add the words “so far as relates to moveable property.”

Against Chapter XXV add the words “except section 396”

Against Chapter XXXVII omit the words and figures “section 506 to 526 (both inclusive.)”

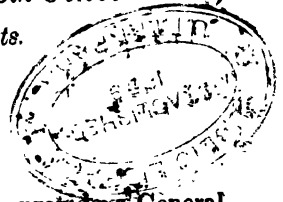
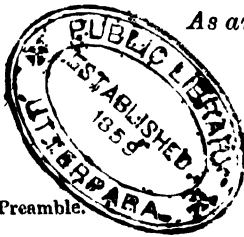
# THE INDIAN PENAL CODE

(**ACT NO. XLV OF 1860.**)

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 6th October 1860.)

*As amended by subsequent enactments.*



## CHAPTER I.

### INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows :—

1. This Act shall be called **THE INDIAN PENAL CODE**, and shall take effect on and from the first day of January 1862\* throughout the whole of the territories which are or may become vested in Her Majesty by the Statute

Title and extent of operation of the Code.

21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India," except the Settlement† of Prince of Wales' Island, Singapore and Malacca.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said first day of January 1862.\*

Punishment of offences committed within the said territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories, in the same manner as if such act had been committed

Punishment of offences committed beyond, but which by law may be tried within the territories.

within the said territories.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said first day of January 1862,\* within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India.

Punishment of offences committed by a servant of the Queen within a Foreign allied State.

5. Nothing in this Act, is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 & 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East

Certain laws not to be affected by this Act.

\* Act VI of 1861.

† Extended to the settlements with certain reservations by Act V of 1867.

India Company, or the said territories, or the inhabitants thereof ; or any of the provisions of any Act for punishing mutiny and desertion of Officers and Soldiers in the service of Her Majesty\* or of any special or local law.

## CHAPTER II.

### GENERAL EXPLANATIONS.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Definition in the Code to be understood subject to exceptions.

#### *Illustrations.*

(a). The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences ; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b). A, a Police officer, without warrant apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement ; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Expression once explained is used in the same sense throughout the Code.

Gender.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man."  
"Woman."

"Person."

"Public."

"Queen."

14. The words "servant of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

15. The words "British India," denote the territories which are or may become vested in Her Majesty by the said Statute 21 & 22 Victoria, Chapter 106, entitled

\* Certain words repealed by Act XIV of 1870.

“An Act for the better government of India” except the Settlement of Prince of Wales’ Island, Singapore, and Malacca.

15. The words “Government of India” denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

17. The word “Government” denotes the person or persons authorized by law to administer executive Government in any part of British India.

18. The word “Presidency” denotes the territories subject to the Government of a Presidency.

19. The word “Judge” denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

*Illustrations.*

(a). A collector exercising jurisdiction in a suit under the North-Western Provinces Rent Act, 1881,\* is a Judge.

(b). A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c). A member of a pancháyat which has power, under Regulation VII. 1816 of the Madras Code, to try and determine suits, is a Judge.

(d). A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. The words “Court of justice” denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

*Illustration.*

A pancháyat acting under Regulation VII. 1816 of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words “public servant” denote a person falling under any of the descriptions herein—after following, namely—

*First.*—Every Covenanted servant of the Queen;

*Second.*—Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India, or any Government;

*Third.*—Every Judge;

*Fourth.*—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

*Fifth.*—Every juryman, assessor, or member of a pancháyat assisting a Court of Justice or public servant;



*Sixth.*—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

*Seventh.*—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

*Eighth.*—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

*Ninth.*—Every officer whose duties it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty ;

*Tenth.*—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

*Illustration.*

A Municipal Commissioner is a public servant.

*Explanation. 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation. 2.*—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

22. The words “moveable property” are intended to include corporeal

“Moveable property.” property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

23. “Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss.” “Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

“Wrongful gain” includes wrongful retention of property. A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing “dishonestly.”

“Dishonest.”

“Fraudulently.”

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

"Reason to believe."

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Property in possession of wife, clerk or servant.

*Explanation.*—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

"Counterfeit."

*Explanation.*—It is not essential to counterfeiting that the imitation should be exact.

\* *Explanation 2.*—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

"Document."

*Explanation 1.*—It is immaterial by what means, or upon what substance, the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

#### *Illustrations.*

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A check upon a banker is a document.

A power of attorney is a document.

A map or plan which is intended to be used, or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

*Explanation 2.* Whatever is expressed by means of letters, figures or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

#### *Illustration.*

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

"Valuable security."

*Illustration.*

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A will."

31. The words "a will" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Words referring to acts include illegal omissions.

33. The word "act" denotes as well a series of acts as a single act : the word "omission" denotes as well a series of omissions as a single omission.

"Act."

"Omission."

34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Liability for act done by several persons in furtherance of common intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Effect caused partly by act and partly by omission.

*Illustration.*

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

*Illustrations.*

(a). A and B agree to murder Z by severally, and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b). A and B are joint jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate, in causing that effect by illegally omitting, each during the time of his attendance to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c). A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food : in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder ; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

*Illustration.*

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

*Illustration.*

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In chapter IV. and in the following sections, namely sections 64, 65, 66, 67, 71,\* 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law." 41. A "special law" is a law applicable to a particular subject.

Local law. 42. A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury." 44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

"Life." 45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." 46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." 47. The word "animal" denotes any living creature, other than a human being.

\* Act VIII of 1882 and Act X of 1886,

"Vessel."

48. The word "vessel" denotes any thing made for the conveyance by water of human beings, or of property.

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Year."

"Month."

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Section."

guished by prefixed numeral figures.

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant

"Oath."

or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith."

52. Nothing is said to be done or believed in good faith, which is done or believed without due

care and attention.

### CHAPTER III.

#### OF PUNISHMENTS.

Punishments.

53. The punishments to which offenders are liable under the provisions of this Code are—

*First*,—Death ;

*Secondly*,—Transportation ;

*Thirdly*,—Penal servitude ;

*Fourthly*,—Imprisonment, which is of two descriptions, namely :

(1) Rigorous, that is, with hard labour.

(2) Simple.

*Fifthly*,—Forfeiture of property.

*Sixthly*,—Fine.

54. In every case in which sentence of death shall have been passed the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV of 1855 :

Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

*Illustration.*

A being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable or immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a

fine,\* it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of the payment of the fine shall be simple and† the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Such imprisonment to terminate upon payment of the fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment, is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of such imprisonment upon payment of proportional part of fine.

#### *Illustration.*

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the

Fine may be levied within 6 years, or at any time during the term of imprisonment.

\* Act VIII. of 1882 and Act X. of 1886.

† Act VIII. of 1882.

expiration, of that period ; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Death of offender not to discharge his property from liability.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.—

Limit of punishment of offence which is made up of several offences.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined, or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.\*

*Illustrations.*

(a). A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b). But if, while A is beating Z, Y interferes, and A intentionally strikes, Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of a person found guilty of one of several offences, the judgment stating that it is doubtful of which.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

Solitary confinement.

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year.†

A time not exceeding three months if the term of imprisonment shall exceed one year:

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven

Limit of solitary confinement.

\* Act VIII. of 1882.

† Act VIII. of 1882.



days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75. Whoever, having been convicted of an offence punishable under chapter XII or chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.\*

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

chapter XII or chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three

years or upwards, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.\*

## CHAPTER IV.

### GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Act done by a person bound, or by mistake of fact believing himself bound by law.

#### *Illustrations.*

(a). A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b). A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act of Judge when acting judicially.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgments or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of a Court of Justice.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

Act done by a person justified, or by mistake of fact believing himself justified by law.

#### *Illustration.*

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80. Nothing is an offence which is done by accident or misfortune, without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

*Illustration.*

A is at a work with a hatchet ; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

*Explanation.*—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

*Illustrations.*

(a). A, the Captain of a Steam Vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b.) A in great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under 7 years of age.

82. Nothing is an offence which is done by a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law ; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

86. In cases where an act done is not an offence unless done with a

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87. Nothing, which is not intended to cause death or grievous hurt,

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

*Illustration.*

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; And if A, while playing fairly, hurts Z, A commits no offence.

88. Nothing, which is not intended to cause death, is an offence by

Act not intended to cause death, done by consent in good faith for the benefit of a person.

reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

*Illustration.*

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Nothing, which is done in good faith for the benefit of a person

Act done in good faith for the benefit of a child or person of unsound mind, by or by consent of guardian.

under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

Provisoos.

*First.*—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

*Secondly.*—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly.*—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

*Fourthly.*—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustration.*

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception—or

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

*Illustration.*

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

*First.*—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

*Secondly.*—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly.*—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

*Fourthly.*—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustrations.*

(a.) Z, is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b.) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c.) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d.) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

*Explanation.*—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Communication made in good faith,

*Illustration.*

A, a surgeon, in good faith, communicates to a patient his opinion that he can not live. The patient dies in consequence of the shock. A has committed no offence though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

*Explanation 1.*—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

*Explanation 2.*—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Act causing slight harm.

### OF THE RIGHT OF PRIVATE DEFENCE.

Nothing done in private defence is an offence.

Right of private defence of the body and of property.

96. Nothing is an offence which is done in the exercise of the right of private defence.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

*First.*—His own body, and the body of any other person, against any offence affecting the human body;

*Secondly.*—The property, whether moveable or immoveable, of himself, or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

*Illustrations.*

(a.) Z, under the influence of madness, attempts to kill A ; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b.) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this mis conception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith, under colour of his office, though that act may not be strictly justifiable by law.

*Second.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

*Third.*—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

*Fourth.*—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

*Explanation 1.*—A person is not deprived of the right of private defence against an act done or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

*Explanation 2.*—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction ; or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

*First.*—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

*Secondly.*—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.

*Thirdly.*—An assault with the intention of committing rape ;

*Fourthly.*—An assault with the intention of gratifying unnatural lust ;

*Fifthly.*—An assault with the intention of kidnapping or abducting;

*Sixthly.*—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

*First.*—Robbery;

*Secondly.*—House-breaking by night;

*Thirdly.*—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

*Fourthly.*—Theft, mischief, or house-trespass, under such circumstances as many reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

*Second.*—The right of private defence of property against theft continues till the offender has effected his retreat with the property or the assistance of the public authorities is obtained, or the property has been recovered.

*Third.*—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

*Fourth.*—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

*Fifth.*—The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

*Illustration.*

A is attacked by a mob who attempted to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

## CHAPTER V.

### OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

*First.*—Instigates any person to do that thing ; or,

*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or,

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration.*

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here, B abets by instigation the apprehension of C.

*Explanation 2.*—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would

Abettor.

be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

*Explanation 1.*—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

*Explanation 2.*—To constitute an offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

*Illustrations.*

(a). A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b). A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.



*Explanation 3.*—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

*Illustrations.*

(a). A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b). A, with the intention of murdering, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence and had committed murder, and he is therefore subject to the punishment of death.

(c). A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d). A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

*Explanation 4.*—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration.*

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

*Explanation 5.*—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

*Illustration.*

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z, dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

*Explanation.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation,

or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

*Illustrations.*

(a). A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b). A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c). A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

and with no other.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed

Liability of abettor when one act is abetted and a different act is done.

Proviso.

under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

*Illustrations.*

(a). A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(b). A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c). A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

*Illustration.*

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

*Illustration.*

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person who, if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.

If an act which causes harm be done in consequence of the abetment, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

*Illustration.*

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

If the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term

provided for that offence, or with such fine as is provided for the offence, or with both.

*Illustrations.*

(a). A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b). A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c). A, a Police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d). B abets the commission of a robbery by A, a Police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Whoever abets the commission of an offence by the public

Abetting the commission of an offence by the public, or by more than ten persons.

generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Illustration.*

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

118. Whoever, intending to facilitate or knowing it to be likely that

Concealing a design to commit an offence punishable with death or transportation for life—

offence, or makes any representation which he knows to be false respecting

If the offence be committed.

If the offence be not committed.

he will thereby facilitate the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years: and in either case shall also be liable to fine.

*Illustration.*

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Whoever, being a public servant, intending to facilitate or know-

A public servant concealing a design to commit an offence which it is his duty to prevent—

ing it to be likely that he will thereby facilitate the commission of an offence the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation

which he knows to be false respecting such design, shall, if the offence be

committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or

If the offence be committed.

with such fine as is

If the offence be punishable with death, &c.

for a term which may extend to ten years; or, if the offence be not

If the offence be not committed.

any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

*Illustration.*

A, an officer of Police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an

Concealing a design to commit an offence punishable with imprisonment—

If the offence be committed.

If not committed.

offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

## CHAPTER VI.

### OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage

Waging, or attempting to wage war, or abetting the waging of war against the Queen.

such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

*Illustrations.*

(a). A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b). A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

121A. Whoever within or without British India conspires to commit

Conspiracy to commit offences punishable by section 121.

any of the offences punishable by hundred and twenty-one, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any presidency, or a Lieutenant-Governor, or a member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128. Whoever, being a public servant, and having the custody of any State Prisoner or Prisoner of War, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Whoever, being a public servant, and having the custody of any State Prisoner or Prisoner of War, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Whoever knowingly aids or assists any State Prisoner or Prisoner of War in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the re-capture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A State Prisoner or Prisoner of War who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

## CHAPTER VII.

### OF OFFENCES RELATING TO THE ARMY AND NAVY.

131. Whoever abets the committing of mutiny by an officer, soldier or sailor in the Army or Navy of Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—In this section the words ‘officer’ and ‘soldier’ include any person subject to the Articles of War for the better government of Her Majesty’s Army, or to the Articles of War contained in Act No. V. of 1869.

132. Whoever abets the committing of mutiny by an officer, soldier or sailor in the Army or Navy of the Queen, shall if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Whoever abets an assault by an officer, soldier or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Whoever abets an assault by an officer, soldier or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Whoever abets the desertion of any officer, soldier or sailor in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier or sailor in the Army or Navy of the Queen has deserted, harbours such officer, soldier or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Exception*—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier or sailor in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

139. No person subject to any Articles of War for the army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this chapter.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be



punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

## CHAPTER VIII.

### OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly, is—

*First.*—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any Public Servant in the exercise of the lawful power of such Public Servant ; or

*Second.*—To resist the execution of any law, or of any legal process ; or

*Third.*—To commit any mischief or criminal trespass, or other offence ; or

*Fourth.*—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

*Fifth.*—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

*Explanation.*—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Whoever hires, or engages or employs, or promotes or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

*Explanation.*—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give

the earliest notice thereof in his or their power to the principal officer at the nearest Police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

**155.** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same.

**156.** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

**157.** Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**158.** Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both; and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**159.** When two or more persons, by fighting, in a public place, disturb the public peace they are said to "commit an affray."

**160.** Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

## CHAPTER IX.

### OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Explanations.*—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a believe that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.\*

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government\* which he serves to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

#### *Illustrations.*

(a). A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b). A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of rupees from the Minister of that power. It does not appear, that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that power. A has committed the offence defined in this section.

(c). A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render

\* The word includes any employer of a Railway-servant. See sec. 27, Act IV. of 1879; also a person entitled to establish a telegraph, see sec. 31, Act XIII. of 1885; also the Court of Wards (C. P.), See sec. 12 (2) of Act XVII. of 1885.

any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

*Illustration.*

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Illustration.*

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

*Illustrations.*

(a). A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b). A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c). Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to

Public servant disobeying a direction of the law, with intent to cause injury to any person.

conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

*Illustration.*

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation

Public servant framing an incorrect document with intent to cause injury.

of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

168. Whoever, being a public servant, and being legally bound as such

Public servant unlawfully engaging in trade.

public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Whoever, being a public servant, and being legally bound, as such

Public servant unlawfully buying or bidding for property.

public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

170. Whoever pretends to hold any particular office as a public

Personating a public servant.

servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

171. Whoever, not belonging to a certain class of public servant,

Wearing garb or carrying token used by public servant with fraudulent intent.

wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servant, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

## CHAPTER X.

### OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if, the summons, notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, or intentionally prevents the lawful affixing to any place of any such summons, notice or order or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### *Illustrations.*

(a). A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b). A, being legally bound to appear before a Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

175.. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Illustration.*

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustration.*

(a.) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the District that the death has occurred by accident in consequence of the bite of snake. A is guilty of the offence defined in this section.

(b.) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police station, wilfully misinforms the Police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

\* *Explanation.*—In section 176 and in this section the word ‘offence’ includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word ‘offender’ includes any person who is alleged to have been guilty of any such Act.



178. Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal power of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181. Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Illustrations.*

(a). A informs a Magistrate that Z, a Police officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b). A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five

185. •Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm.

*Illustration.*

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing

that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application, for protection against any injury, to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Threat of injury to induce any person to refrain from applying for protection to a public servant.

## CHAPTER XI.

### OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

*Explanation 1.*—A statement is within the meaning of this section, whether it is made verbally or otherwise.

*Explanation 2.*—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

#### *Illustrations.*

(a). A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b). A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c). A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d). A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named, or not.

(e). A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a

judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstances, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

*Illustrations.*

(a). A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b). A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c). A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation 1.*—A trial before a Court Martial\* is a judicial proceeding.

*Explanation 2.*—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

*Illustrations.*

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

*Explanation 3.*—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

*Illustration.*

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by† the law of British India or England shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

\* Act XIII of 1889.

† Act IX of 1890.

**195.** Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted of an offence which by\* the law of British India or England is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

*Illustration.*

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

**196.** Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

**197.** Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing a false certificate.

**198.** Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence,

Using as a true certificate one known to be false in a material point.

**199.** Whoever, in any declaration made or subscribed by him, which any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

False statement made in any declaration which is by law receivable as evidence.

**200.** Whoever corruptly uses or attempts to use as true any such declaration knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true any such declaration known to be false.

*Explanation.*—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

**201.** Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for

Causing disappearance of evidence of an offence committed, or giving false information touching it, to screen the offender—

If a capital offence.

a term which may extend to seven years, and shall also be liable to fine ;

If punishable with trans- and if the offence is punishable with transportation  
portation.

ten years, shall be punished with imprisonment of either description for a term  
which may extend to three years, and shall also be liable to fine ; and if the

If punishable with less offence is punishable with imprisonment for any term  
than ten years' imprison- not extending to ten years, shall be punished with  
ment. imprisonment of the description provided for the

offence, for a term which may extend to one-fourth part of the longest term  
of the imprisonment provided for the offence, or with fine, or with  
both.

#### *Illustration.*

A, knowing that B has murdered Z, assist B to hide the body with the intention  
of screening B from punishment. A is liable to imprisonment of either description  
for seven years, and also to fine.

**202.** Whoever, knowing or having reason to believe that an offence

Intentional omission to has been committed, intentionally omits to give any  
give information of an off- information respecting that offence which he is  
ence, by a person bound legally bound to give, shall be punished with im-  
to inform. prisonment of either description for a term which

may extend to six months, or with fine, or with both. .

**203.** Whoever, knowing or having reason to believe that an offence

Giving false information has been committed, gives any information respect-  
respecting an offence com- ing that offence which he knows or believes to be  
mitted. false, shall be punished with imprisonment of either

description for a term which may extend to two years, or with fine, or with  
both.

*\* Explanation.*—In sections 201 and 202 and in this section the word  
'offence' includes any act committed at any place out of British India,  
which, if committed in British India, would be punishable under any of the  
following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397,  
398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

**204.** Whoever secretes or destroys any document which he may be

Destruction of document lawfully compelled to produce as evidence in a  
to prevent its production Court of Justice, or in any proceeding lawfully held  
as evidence. before a public servant as such, or obliterates or ren-  
ders illegible the whole or any part of such document with the intention of

preventing the same from being produced or used as evidence before such  
Court or public servant as aforesaid, or after he shall have been lawfully  
summoned or required to produce the same for that purpose, shall be punish-  
ed with imprisonment of either description for a term which may extend  
to two years, or with fine, or with both.

**205.** Whoever falsely personates another, and in such assumed charac-

False personation for the ter makes any admission or statement, or confesses  
purpose of any act or judgment, or causes any process to be issued, or be-  
proceeding in a suit. comes bail or security, or does any other act in  
any suit or criminal prosecution, shall be punished with imprisonment of

either description for a term which may extend to three years, or with fine, or with both.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustration.*

A instigates a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed

against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

211. Whoever, with intent to cause injury to any person, institutes False charge of offence or causes to be instituted any criminal proceeding made with intent to injure. against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Whenever an offence has been committed, whoever harbours or Harbours an offender— conceals a person whom he knows or has reason to believe to be the offender, with intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

\* 'Offence' in this section includes any Act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460, and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

*Exception.*—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

*Illustration.*

A, knowing that B has committed dacoity; knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Whoever accepts, or attempts to obtain, or agrees to accept any Taking gift, &c., to gratification for himself or any other person, or any screen an offender from restitution of property to himself or any other person, punishment— in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not



proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life, or with imprisonment.

with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Whoever gives or causes, or offers or agrees to give or cause, any

Offering gift or restoration of property in consideration of screening offender—

gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If a capital offence.

If punishable with transportation for life, or with imprisonment.

may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may be lawfully compounded.\*

#### *Illustrations.*

(a). A assaults B with intent to commit murder. Here, as the offence does not consist of assault only, irrespective of the intention to commit murder, it does not fall within the exception, and cannot therefore be compounded.

(b). A assaults B. Here, as the offence consists simply of the act irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception, and may be compounded.

(c). A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.

(d). B commits the offence of adultery with a married woman. The offence may be compounded.

215. Whoever takes or agrees or consents to take any gratification

Taking gift to help to recover stolen property, &c.

under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offen-

der to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, if offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

If a capital offence.

may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life, or with imprisonment.

If punishable with transportation for life, or with imprisonment.

shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

“Offence” in this section includes also any act or omission of which a person is alleged to have been guilty out of British India, and which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

*Exception.*—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216. A. \* Whoever knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

*Explanation* :—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed within or without British India.

*Explanation* :—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

216. B. In sections 212, 216 and 216 A. the word ‘harbour’ includes the supplying a person with shelter, food, drink, money, clothes, arms,

\* Act III of 1894.

ammunition or means of conveyance, or the assisting a person in any way to evade apprehension.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save or knowing it to be likely that he will thereby save any person from legal punishment or subject him to a less punishment than that to which he is liable, or with intent to save or knowing that he is likely thereby to save any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause or knowing it to be likely that he will thereby cause loss or injury to the public or to any person, or with intent thereby to save or knowing it to be likely that he will thereby save any person from legal punishment, or with intent to save or knowing that he is likely thereby to save any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement shall be punished as follows, that is to say :—

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.  
Punishment,  
With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who

ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with death ; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public

Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence or lawfully committed.

servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or\* lawfully committed to custody ; intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished

Punishment

as follows, that is to say :--

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement or who ought to have been apprehended is under sentence of death ; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years, or upwards ; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

223. Whoever, being a public servant legally bound as such public

Escape from confinement or custody negligently suffered by a public servant.

servant to keep in confinement any person charged with or convicted of any offence or\* lawfully committed to custody ; negligently suffers such person to escape from confinement, shall be punished with

simple imprisonment for a term which may extend to two years, or with fine, or with both.

224. Whoever intentionally offers any resistance or illegal obstruction

Resistance or obstruction by a person to his lawful apprehension.

to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any



custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Explanation.*—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

<p>225. Whoever intentionally offers any resistance or illegal obstruction</p> <p>Resistance or obstruction to the lawful apprehension of another person.</p> <p>is lawfully detained for an offence, shall be punished with imprisonment of</p> <p>Punishment.</p>	<p>to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;</p>
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Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225 A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

“(a). If he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and

“(b). if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

225 B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**226.** Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

**227.** Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered up part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

**228.** Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**229.** Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## CHAPTER XII.

### OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

**230.** Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

*'Coin' defined.*  
Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

#### *Illustrations.*

- (a). Cowries are not coin.
- (b). Lumps of unstamped copper, though used as money, are not coin.
- (c). Medals are not coin, inasmuch as they are not intended to be used as money.
- (d). The coin denominated as the Company's rupee is the Queen's coin.

**231.** Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation.*—A person commits this offence, who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever counterfeits or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Whoever, having any counterfeit coin which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished



with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**240.** Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**241.** Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

*Illustration.*

A, a colner delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240 as the case may be.

**242.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**243.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**244.** Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**245.** Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**246.** Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

Fraudulently or dishonestly diminishing the weight or altering the composition of any coin.

*Explanation.*—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

**247.** Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing the weight or altering the composition of the Queen's coin.

**248.** Whoever performs on any coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of any coin with intent that it shall pass as a coin of a different description.

**249.** Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.

**250.** Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is altered.

**251.** Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

**252.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

**253.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**254.** Whoever delivers to any other person as genuine or as a coin of a

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

different description from what it is, or attempts to induce any person to receive as genuine or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

**255.** Whoever counterfeits, or knowingly performs any part of the

Counterfeiting a Government stamp.

process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

**256.** Whoever has in his possession any instrument or material for the

Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.

purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**257.** Whoever makes, or performs any part of the process of making,

Making or selling instrument for the purpose of counterfeiting a Government stamp.

or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**258.** Whoever sells, or offers for sale, any stamp which he knows or

Sale of counterfeit Government stamp.

has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## CHAPTER XIII.

### OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Whoever makes, sells, or disposes of, any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## CHAPTER XIV.

### OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

268. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to person who may have occasion to use any public right,

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows, or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Whoever adulterates any articles of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal, at purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. .Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Negligence with respect to pulling down or repairing buildings.  
289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to any animal.  
290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance.  
291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Continuance of nuisance after injunction to discontinue.  
292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Sale, &c. of obscene books  
*Exception.*—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for conveyance of idols, or kept or used for any religious purpose.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Having in possession obscene book for sale or exhibition.  
294. Whoever sings, recites, or utters in or near any public place any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Obscene songs.  
294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorised by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Keeping lottery-office.  
And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.



## CHAPTER XV.

### OF OFFENCES RELATING TO RELIGION.

**295.** Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**296.** Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**297.** Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**298.** Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

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## CHAPTER XVI.

### OF OFFENCES AFFECTING THE HUMAN BODY.

#### OF OFFENCES AFFECTING LIFE.

**299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

#### *Illustrations.*

[a]. A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b). A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c). A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

*Explanation 1.*—A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

*Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

*Explanation 3.*—The causing of the death of the child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so immediately dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

#### • Illustrations.

(a). A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b). A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c). A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d). A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

*Exception 1.*—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person

When culpable homicide is not murder.

who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

*First.*—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

*Secondly.*—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

*Thirdly.*—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

*Explanation.*—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

#### *Illustrations.*

(a). A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b). Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

[c]. A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d). A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

[e]. A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

[f]. Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

*Exception 2.*—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

#### *Illustration.*

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

*Exception 3.*—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

*Exception 4.*—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden

quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

*Explanation.*—It is immaterial in such cases which party offers the provocation or commits the first assault.

*Exception 5.*—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent.

*Illustration.*

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder by a life-convict.

303. Whoever being under sentence of transportation for life, commits murder, shall be punished with death.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death: or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Punishment for culpable homicide not amounting to murder.

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Causing death by negligence

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide of child or insane person.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of Suicide.

**307.** Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

*Illustrations.*

(a). A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b). A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c). A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(d). A, intending to murder Z by poison purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

**308.** Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Illustration.*

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

**309.** Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.\*

**310.** Whoever at any time after the passing of this Act shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a Thug.

**311.** Whoever is a Thug shall be punished with transportation for life, and shall also be liable to fine.

**OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.**

**312.** Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman,

Causing miscarriage.

be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation.*—A woman who causes herself to miscarry is within the meaning of this section.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

*Explanation.*—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Illustration.*

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Explanation.*—This section is not intended to prevent the trial of the offender for murder of culpable homicide as the case may be, if the child die in consequence of the exposure.

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall

Causing miscarriage without woman's consent.

Death caused by an act done with intent to cause miscarriage —

If act done without woman's consent,

Act done with intent to prevent a child being born alive or to cause it to die after birth.

Causing death of a quick unborn child by an act amounting to culpable homicide.

Exposure and abandonment of a child under twelve years, by parent or person having care of it.

Concealment of birth by secret disposal of dead body.

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### OF HURT.

**Hurt.** 319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

**Grievous hurt.** 320. The following kinds of hurt only are designated as "grievous":—

*First.*—Emasculation.

*Secondly.*—Permanent privation of the sight of either eye.

*Thirdly.*—Permanent privation of the hearing of either ear.

*Fourthly.*—Privation of any member or joint.

*Fifthly.*—Destruction or permanent impairing of the powers of any member or joint.

*Sixthly.*—Permanent disfiguration of the head or face.

*Seventhly.*—Fracture or dislocation of a bone or tooth.

*Eighthly.*—Any hurt which engenders life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

#### *Illustration.*

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**325.** Whoever, except in the case provided by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

**326.** Whoever, except in the case provided by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive in the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

**327.** Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

**328.** Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, &c., with intent to commit an offence.

**329.** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

**330.** Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.



*Illustrations.*

(a). A, a Police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b). A, a Police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c). A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d). A, a zamindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this section.

**331.** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**332.** Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**333.** Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**334.** Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

**335.** Whoever voluntarily\* causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

*Explanation.*—The last two sections are subject to the same provisos as Exception 1, section 300.

**336.** Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees or with both.

*Punishment for act which endangers life or the personal safety of others.* **337.** Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

*Causing hurt by an act which endangers life or the personal safety of others.* **338.** Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

#### WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

**339.** Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

*Wrongful restraint.* *Exception.*—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

#### *Illustration.*

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

**340.** Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.

#### *Illustrations.*

(a). A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b). A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

**341.** Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

*Punishment for wrongful restraint.* **342.** Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**343.** Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Wrongful confinement to three or more days.

**344.** Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for ten or more days.

**345.** Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

Wrongful confinement of person for whose liberation a writ has been issued.

**346.** Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

**347.** Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

**348.** Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

#### OF CRIMINAL FORCE AND ASSAULT.

**349.** A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion or change of motion or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion,

Force.

or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :

*First.*—By his own bodily power.

*Secondly.*—By disposing any substance in such a manner that the motion, or change, or cessation of motion takes place without any further act on his part or on the part of any other person.

*Thirdly.*—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

*Illustrations.*

(a). Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substance in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z ; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b). Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z ; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has committed criminal force to Z.

(c). Z is riding in a palanquin. A intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z ; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d). A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z he has used criminal force to Z.

(e). A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z ; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f). A intentionally pulls up a woman's veil. Here A intentionally uses force to her ; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g). Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that

such contact must affect Z's sense of feeling : A has therefore intentionally used force to Z ; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h). A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

**351.** Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

*Illustrations.*

(a). A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b). A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c). A takes up a stick saying to Z, " I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

**352.** Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.*—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence,—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant,—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

**353.** Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**354.** Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

Assault or use of criminal force to a woman with intent to outrage her modesty.

**355.** Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**356.** Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**357.** Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**358.** Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment, for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

*Explanation.*—The last section is subject to the same explanation as section 352.

#### OF KIDNAPPING, ABDUCTION, SLAVERY AND FORCED LABOUR.

**359.** Kidnapping is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship.

**360.** Whoever conveys any person beyond the limits of British India without the consent of that person or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

**361.** Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

*Explanation.*—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

*Exception.*—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

**362.** Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

**363.** Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**364.** Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

*Illustrations.*

(a). A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b). A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

**365.** Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**366.** Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**367.** Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**368.** Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

**369.** Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

**370.** Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**371.** Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

**372.** Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**373.** Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**374.** Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### OF RAPE.

**375.** A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

*First.*—Against her will.

*Secondly.*—Without her consent.

*Thirdly.*—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

*Fourthly.*—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

*Fifthly.*—With or without her consent, when she is under ten years of age.

*Explanation.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*Exception.*—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

**376.** Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.



## OF UNNATURAL OFFENCES.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unnatural offences.

*Explanation.*—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

## CHAPTER XVII.

## OF OFFENCES AGAINST PROPERTY.

## OF THEFT.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

*Explanation 1.*—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving effected by the same act which effects the severance, may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person, who by any means causes an animal to move, is said to move that animal, and to move every thing which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession or by any person having for that purpose authority either express or implied.

*Illustrations.*

(a). A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(b). A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c). A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d). A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e). Z, going on a journey, entrusts his plate to A, the keeper of a warehouse till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate, was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft though he may have committed criminal breach of trust.

(f). A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g). A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h). A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i). A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j). If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft inasmuch as he takes it dishonestly.

(k). Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l). A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m). A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n). A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o). A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p). A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

**379.** Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for theft.

**380.** Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft in dwelling-house &c.

**381.** Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk or servant of property in possession of master.

**382.** Whoever commits theft, having made preparation for causing death or hurt or restraint, or fear of death or of hurt or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

*Theft after preparation made for causing death or hurt, in order to the committing of the theft.*

*Illustrations.*

(a). A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z, in case Z should resist. A has committed the offence defined in this section.

(b). A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

**OF EXTORTION.**

**383.** Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

*Extortion.*

*Illustrations.*

(a). A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b). A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c). A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d). A, by putting Z in fear for grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

**384.** Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

*Punishment for extortion.*

**385.** Whoever, in order to the committing of extortion, puts any person in fear or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Putting person in fear of injury in order to commit extortion.*

**386.** Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Extortion by putting a person in fear of death or grievous hurt.*

**387.** Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**388.** Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under section 377, may be punished with transportation for life.

**389.** Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under section 377, may be punished with transportation for life.

#### OF ROBBERY AND DACOITY.

Robbery.

**390.** In all robbery there is either theft or extortion.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the

When theft is robbery. theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

*Explanation.*—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

#### *Illustrations.*

(a). A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here Z has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongfully restraint to Z. A has therefore committed robbery.

(b). A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here Z has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c). A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. A, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d). A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such : but it is not robbery, unless Z is put in fear of the instant death of his child.

**391.** When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

**392.** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

**393.** Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**394.** If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**395.** Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**396.** If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**397.** If, at the time of committing robbery or dacoity, the offender used any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

**398.** If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

**399.** Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associate for the purpose of Punishment for belong- ing to a gang of dacoits. to a gang of persons associate for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated Punishment for belong- ing to a wandering gang of thieves. for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of Assembling for purpose of committing dacoity. committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

#### OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with im- Dishonest misappropria- tion of property. prisonment of either description for a term which may extend to two years, or with fine, or with both.

##### *Illustrations.*

[a]. A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

[b]. A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

[c]. A and B being joint owner's of a horse, A takes the horse out of B's possession, intending to use it. Here, A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

*Explanation 1.*—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

##### *Illustration.*

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

*Explanation 2.*—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

*Illustrations.*

[a]. A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

[b]. A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

[c]. A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

[d]. A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

[e]. A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

[f]. A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

**404. Whoever dishonestly misappropriates or converts to his own use**

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession,

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

*Illustration.*

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

### OF CRIMINAL BREACH OF TRUST.

**405. Whoever, being in any manner entrusted with property, or with**

Criminal breach of trust.

any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

(a). A being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b). A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c). A, residing in Calcutta, is agent for Z residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d). But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e). A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f). A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished

Punishment for criminal breach of trust. with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

407. Whoever being entrusted with property as a carrier, wharfinger,

Criminal breach of trust by carrier, &c. or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

408. Whoever, being a clerk or servant or employed as a clerk or ser-

Criminal breach of trust by a clerk or servant. vant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Whoever, being in any manner entrusted with property, or with

Criminal breach of trust by public servant, or by banker, merchant or agent. any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### OF THE RECEIVING OF STOLEN PROPERTY.

410. Property the possession whereof has been transferred by theft, or

Stolen property. by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property," whether the transfer has been made, or the misappropriation or



breach of trust has been committed, within or without British India.\* But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### OF CHEATING.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

*Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section.

#### *Illustrations.*

(a). A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for he does not mean to pay. A cheats.

(b). A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c). A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d). A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally

deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e). A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f). A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g). A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h). A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i). A sells and conveys an estate to B. A knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

*Explanation.*—The offence is committed whether the individual personated is a real or imaginary person.

*Illustrations.*

(a). A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b). A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating and dishonestly inducing a delivery of property.

## OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

**421.** Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

**422.** Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**423.** Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**424.** Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## OF MISCHIEF.

**425.** Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits "mischief."

*Explanation 1.*—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

*Explanation 2.*—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

*Illustrations.*

(a). A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b). A introduces water into an ice house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

[c]. A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

[d]. A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

[e]. A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

[f]. A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

[g]. A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

[h]. A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Whoever commits mischief by doing any act which causes or which knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for works of irrigation or by food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge or road, bridge, navigable river, or navigable channel natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

- 433.** Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall

Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.

be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

- 434.** Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to

Mischief by destroying or moving, &c., a land-mark fixed by Public authority.

one year, or with fine, or with both.

- 435.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, or (where the property is agricultural produce) ten

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.

Rupees or upwards,\* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

- 436.** Whoever commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of

Mischief by fire or explosive substance with intent to destroy a house, &c.

property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

- 437.** Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe or knowing it to be likely that he will thereby destroy or render unsafe that

Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.

vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

- 438.** Whoever commits or attempts to commit by fire or any explosive substance such mischief as is prescribed in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last section, when committed by fire or any explosive substance.

- 439.** Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Whoever commits mischief, having made preparation for causing mischief committed after preparation made for causing death or hurt, to any person death or hurt or wrongful restraint, or fear of death or of hurt or wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship or as a place for the custody of property, is said to commit "house-trespass."

*Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

445. A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways, hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

*Firstly.*—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

*Secondly.*—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

*Thirdly.*—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

*Fourthly.*—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

*Fifthly.*—If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

*Sixthly.*—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

*Explanation.*—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

*Illustrations.*

(a). A commits house-trespass by making a hole through the wall of Z's house and putting his hand through the aperture. This is house-breaking.

(b). A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c). A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d). A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e). A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f). A finds the key of Z's house door, which Z has lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g). Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h). Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to

be committed is theft, the term of the imprisonment may be extended to seven years.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Whoever commits lurking house-trespass or house-breaking having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Whoever commits lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Whoever commits lurking house-trespass by night or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.



460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or

All persons jointly concerned in house-breaking, &c., to be punishable for death, or grievous hurt, caused by one of their number.

with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

## CHAPTER XVIII.

### OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to

Forgery.

cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. A person is said to make a false document—  
Making a false document.

*First.*—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

*Secondly.*—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

*Thirdly.*—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or introduction cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

*Illustrations.*

(a). A has a letter of credit upon B for rupees 10,000, written by Z, A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b). A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(c). A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d). A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e). A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f). Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g). A endorses a Government promissory note and makes it payable to Z or his order, by writing on the bill the words "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h). A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i). Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j). A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain aims from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k). A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

*Explanation 1.*—A man's signature of his own name may amount of forgery.

*Illustrations.*

(a). A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A was committed forgery.

(b). A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c). A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be

believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d). A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure, B, though he executes the lease in his own name, commits forgery by antedating it.

(e). A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

*Explanation 2*—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

*Illustration.*

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466. Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

"A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document."

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Whoever has in his possession any document, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in

the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

\* OF TRADE AND PROPERTY-MARKS.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark and for the purposes of this code the expression "trade-mark" includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs and Trade-Marks Act, 1883, and any trade-mark which either with or without registration is protected by law in any British Possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade-Marks Act, 1883, are under order in Council for the time being applicable.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

481. Whoever marks any moveable property or goods or any case, package, or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked belong to a person to whom they do not belong is said to use a false property-mark.

482. Whoever uses any false trade-mark or any false property-mark shall unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

483. Whoever counterfeits any trade-mark or property-mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

484. Whoever counterfeits any property-mark used by a public servant,

Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.

or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark

knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Whoever makes or has in his possession any die, plate or other

Fraudulent making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.

instrument for the purpose of counterfeiting a trade-mark or property-mark or has in his possession a trade-mark or property-mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not or that they belong to a

person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

486. Whoever sells or exposes or has in possession for sale or any pur-

Knowingly selling goods marked with a counterfeit property or trade-mark.

pose of trade or manufacture any goods or things with a counterfeit trade-mark or property-mark affixed to or impressed upon the same or to or upon

any case, package or other receptacle in which such goods are contained shall, unless he proves—

(a) that having taken all reasonable precautions against committing an offence against this section he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark and

(b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things or,

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

487. Whoever makes any false mark upon any case, package or other

Fraudulently making a false mark upon any package or receptacle containing goods.

receptacle containing goods in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain, or that it does not contain

goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall unless he proves that he acted without intent to defraud be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488. Whoever makes use of any such false mark in any manner pro-

Punishment for making use of any such false mark.

hibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

489. Whoever removes, destroys, defaces or adds to any property-mark

Defacing any property-mark with intent to cause injury.

intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term,

which may extend to one year, or with fine or with both,

## CHAPTER XIX.

## OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

**490.** Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

*Illustrations.*

(a). A, palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b). A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(c). A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another illegally omits to do so. A has committed the offence defined in this section.

(d). A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

*Explanation.*—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

*Illustration.*

A contracts with a dak company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

**491.** Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

**492.** Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or labourer for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause

refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

## CHAPTER XX.

### OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him, to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.*

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Marrying again during the lifetime of husband or wife.*

*Exception.*—This section does not extend to any person whose marriage, with such husband or wife, has been declared void by Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

495. whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.*

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Marriage ceremony gone through with fraudulent intent without lawful marriage.*

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both. In such case the wife shall not be punishable as an abettor.

*Adultery.*



498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Enticing or taking away or detaining with a criminal intent a married woman.

## CHAPTER XXI.

### OF DEFAMATION.

499. Whoever, by words either spoken or intended to be read, or, by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases herein-after excepted, to defame that person.

Defamation.

*Explanation 1.*—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.*—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

*Explanation 4.*—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

#### *Illustrations.*

(a). A says—"Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the Exceptions.

(b). A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

(c). A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

*First Exception.*—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of any truth which the public good requires to be made or published.

**Second Exception.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

**Third Exception.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

*Illustration.*

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

**Fourth Exception.**—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

**Explanation.**—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

**Fifth Exception.**—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

*Illustrations.*

(a). A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this Exception if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b). But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity;"—A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

**Sixth Exception.**—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther.

**Explanation.**—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

*Illustrations.*

(a). A person who publishes a book, submits that book to the judgment of the public.

(b). A person who makes a speech in public, submits that speech to the judgment of the public.

(c). An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d). A says of a book published by Z—"Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this Exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(e). But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine;" A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

*Seventh Exception.*—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a law contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by a person having lawful authority over another.

#### *Illustrations.*

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this Exception.

*Eighth Exception.*—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Accusation preferred in good faith to a duly authorized person.

#### *Illustrations.*

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this Exception.

*Ninth Exception.*—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Imputation made in good faith by a person for the protection of his interests.

#### *Illustrations.*

(a). A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the Exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b). A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good A is within the Exception.

*Tenth Exception.*—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for the good of the person to whom it is conveyed or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

## CHAPTER XXII.

### OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

#### *Illustration.*

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

505. Whoever circulates or publishes any statement, rumour or report which he knows to be false, with intent to cause any officer, soldier or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**507.** Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

**508.** Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Illustrations.*

(a). A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b). A threatens Z that unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

**509.** Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sounds shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

**510.** Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

## CHAPTER XXIII.

### OF ATTEMPTS TO COMMIT OFFENCES.

**511.** Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation

or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

*Illustrations.*

(a). A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b). A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket : A is guilty under this section.

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## INDEX TO THE INDIAN PENAL CODE.

---

SUBJECT.	SECTIONS
Abduction ... ..	362-369
——— of woman to force her to illicit intercourse ...	386
Abetment ... ..	107-117
——— of acts of insubordination by soldier or sailor ...	138
Absconding to avoid service of summons or order ...	172
ACCIDENT—acts done by, no offence in certain cases ...	80
Acts done by order of Judge ... ..	77
——— under threat ... ..	94
——— in a state of intoxication ... ..	85, 86
Adulteration of food, drink and drugs ... ..	272-275
Adultery ... ..	497-498
Affray ... ..	159-160
Ally of the Queen, offences against an ... ..	125-127
ANIMALS—mischief done to ... ..	428-429
ARMY—offences relating to the ... ..	131-140
Assault ... ..	351-358
ATMOSPHERE—making it injurious to health ... ..	278
Attempt to commit an offence ... ..	511
——— to commit murder ... ..	307
——— to commit culpable homicide ... ..	308
——— to commit suicide ... ..	309
Bigamy ... ..	494-496
Breach of Trust ... ..	405-409
BRIBE—taking ... ..	161-165
——— to screen an offender ... ..	213-214
——— to help recovering stolen property ... ..	215
BUILDING—neglect to repair or pull down ... ..	237
CERTIFICATE—issuing or signing a false ... ..	197-198
Cheating ... ..	415-420
CHILDREN—criminal responsibility of ... ..	82-90
Co-habitation by deceitfully inducing belief of lawful marriage	493
COIN—definition of and offences relating to ... ..	230-254
Compounding an offence ... ..	213-215
COMPULSION—acts done under, when no offence ... ..	94
Concealing by a public servant of an offence ... ..	119



SUBJECT.	SECTIONS.
Concealing escaped prisoner of State ... ..	130
———— a deserter ... ..	136
———— or transferring property to avoid seizure ...	206, 217
———— an offender ... ..	212 & 216
———— the birth of a child ... ..	318
CONSENT—how far it influences criminality ... ..	87-92
Conspiracy to wage war ... ..	121A.
Contempt of lawful authority ... ..	172-188
Counterfeiting a device or mark ... ..	475-478
Criminal force towards a public servant ... ..	353
———— towards a woman ... ..	354
———— towards any person with intent to dishonor ...	355
Criminal trespass ... ..	441-452
Culpable homicide ... ..	299-308
Dacoity . ... ..	391, 395, 400, 402
DECEASED—misappropriating property of a ... ..	404
DECLARATION—making a false ... ..	199
———— using a false ... ..	200
DECREE—causing a—to be passed for sum not due ...	208
———— getting a—for sum not due ... ..	210
DEED—fraudulent execution of ... ..	423
Defamation ... ..	499-502
Definitions ... ..	8-52
Depredation on territories of a power at peace with the Queen	126-127
Destruction of document ... ..	204 & 477
DISAFFECTION—exciting—against Government ... ..	124A.
DRAINAGE—obstructing ... ..	432
DRIVING—rash or negligent ... ..	279
DRUGS—adulteration of ... ..	274-276
———— administering unwholesome ... ..	328
Drunkenness ... ..	85-86
Enticing minors ... ..	361
———— married women ... ..	498
Erasure of mark from stamp ... ..	263
Escaping from custody ... ..	216
EVIDENCE—causing it disappear ... ..	201-204
———— giving false ... ..	181, 191-195
EXPLOSIVES—offences relating to, ... ..	286, 326, 436
Extortion ... ..	383-389
Fabricating false evidence ... ..	192

SUBJECT.	SECTIONS.
FALSE—giving information to a public servant ...	177-182, 201, 203
----- of design to commit offence ...	118, 120
----- or fraudulent claim—making a ...	207-209
----- making a — charge ...	211
----- signing a—certificate ...	197
----- making a—declaration ...	199
----- personation ...	140, 170, 171, 205, 229
----- translation ...	167
----- statement as to consideration in a deed ...	423
Fine ...	63-70
FIRE—negligent conduct with respect to ...	285
FOOD—adulteration ...	272-273
FORCED LABOR—exacting ...	374
FORFEITURE—sentence of ...	61-62
Forgery ...	463-474
Fraudulent transfer to defraud creditors ...	421-422
General exceptions ...	76-106
GOVERNMENT—meaning of the word ...	16-17
GOVERNOR GENERAL OR THE GOVERNOR OF A PRESIDENCY—	
assault on the ...	124
GRATIFICATION—see Bribe.	
Harbouring a prisoner of State ...	130
----- a deserter ...	136
----- other offenders ...	157, 212, 216
HOUSE—breaking ...	445, 453, 458
----- accompanied by grievous hurt ...	459
HOUSE—trespass ...	442, 448-52
Hurt ...	319-324
----- for purposes of extortion ...	327
----- of extorting confession ...	330
----- for deterring public servant from doing his duty ...	332-333
IMPRISONMENT—punishment of ...	53-73
INFANT—criminal responsibility of ...	82, 83
INFORMATION—omission to give ...	176
INSANE PERSONS—criminal responsibility ...	84
----- acts done for benefit of ...	89
Insulting women by word or gesture ...	509
----- public servants in discharge of duty ...	228
----- with intent to provoke breach of peace ...	504
Intimidation, acts done under ...	94

SUBJECT.	SECTIONS.
Intimidation, criminal	503-508
INTOXICATION—how far a defence	85, 86
————— misconduct in public by	510
Kidnapping	359-371
LAND—owner or occupier's responsibility when a riot occurs	154-56
LAND MARK—moving or destroying—fixed by a public servant...	434
LIGHT—exhibiting a false—or mark	281
LIGHT HOUSE—removing or destroying	433
LURKING HOUSE—trespass	453-58
MACHINERY—negligent conduct as to	287
MARK—offences relating to trade or property	481-89
MARRIAGE—abducting a woman to compel	366
————— forging a — register	466
MEASURE—using or keeping in possession a false	264-267
Misappropriation of property	403, 404
MISCARRIAGE—causing	312-316
Mischief	425-440
MORALS—offences affecting public	292-94A.
Murder	300-307
MUTINY—abetting—and insubordination	131-138
————— circulating false report with a view to excite —	505
NAVIGATION—rash or negligent	280-283
————— obstructing or injuring	431
NAVY—offences relating to	131-40
Nuisance	268-290
OATH—refusing to take	178
OBSCENE WORKS—printing, selling	292-93
OFFENCE—in what cases acts do not amount to	76-96
OMISSION—illegal	32, 107, 108, 120, 176, 187, 221
OWNER OR OCCUPIER OF LAND—responsibility in cases of riot	154-155
————— liable for nuisance	283
PEACE—provoking breach of	504
PERSONATING—see false personation.	
POISON—negligence in respect of	284, 286
Printing or engraving defamatory matter	501
PROPERTY MARK—offences relating to	479-489
PUBLIC JUSTICE—offences against	191-229
PUBLIC SERVANT—taking bribe	161-165
————— disobeying direction of law with a view to injure	166

SUBJECT.	SECTIONS.
PUBLIC SERVANT—framing incorrect document ...	167 & 218
—————unlawfully engaging in trade ...	168
—————buying property ...	169
—————personating a ...	170
—————wearing garb of a ...	140 & 171
—————disobeying direction of law in order to screen an offender ...	217
—————intentionally acting contrary to law ...	219-223
—————obstructing — in the discharge of duty ...	186 & 228
PUBLIC NUISANCE—see nuisance.	
Punishments under the Code ...	55-75
Rape ...	375-376
RASHNESS causing death or endangering life ...	304A, 336-338
Receiving stolen property ...	410-414
RELIGION—offences against... ..	295-298
Right of private defence ...	96-106
Rioting ...	146-157
ROAD—destroying or injuring a public ...	431
Robbery ...	390-398
SEAL, MOULD OR PLATE—making for purposes of forgery ...	472-474
SERVANT—theft by ...	381
—————breach of trust by ...	408
—————'s possession is possession of master ...	27
—————breach of contract of service ...	490-492
STAMP—offences relating to ...	255-263
STATE—offences relating to the ...	121-130
SUICIDE—attempt to commit ...	309
—————abetting — by a child or lunatic ...	305-306
SUMMONS—absconding to avoid ...	172
—————preventing service of ...	173
Theft ...	378-381
THREAT—act done under ...	94
Thug ...	310-311
Torture ...	327-331
TRADE MARK—see property mark.	
Unlawful Assembly ...	141-151
Unnatural offences ...	377
WAR—waging—against the Queen ...	121
WATER—polluting of a public spring ...	277
WEIGHTS—offences relating to—see measures.	

SUBJECT.	SECTIONS.		
WIFE—concealing her husband	...	...	136
WILL—see seals &c.			
WORSHIP—see Religion.			
Wrongful Confinement	...	...	339 348
——— Restraint	...	..	339

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THE  
CODE OF CRIMINAL PROCEDURE,  
1882.

*(As amended by subsequent enactments.)*

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TABLE OF CONTENTS.

PREAMBLE.

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PART I.

Preliminary.

---

CHAPTER I.

SECTIONS.

1. Short title.  
Commencement.  
Local extent.
2. Repeal of enactments.  
Notifications, &c., under repealed Acts.
3. References to Code of Criminal Procedure and other repealed enactments.  
Expressions in former Acts.
4. Interpretation-clause.  
Words referring to acts.  
Words to have same meaning as in Penal Code.
5. Trial of offences under Penal Code.  
Trial of offences against other laws.

PART II.

Constitution and Powers of Criminal Courts and offences.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Classes of Criminal Courts.

*B.—Territorial Divisions.*

## SECTIONS.

## 7. Sessions Divisions.

Districts.

Power to alter Divisions and Districts.

Existing Divisions and Districts maintained till altered.

Presidency-towns to be deemed Districts.

## 8. Power to divide Districts into Sub-divisions.

Existing Sub-divisions maintained.

*C.—Courts and Offices outside the Presidency-towns.*

## 9. Court of Session.

## 10. District Magistrate.

## 11. Officers temporarily succeeding to vacancies in office of District Magistrate.

## 12. Subordinate Magistrates.

Local limits of their jurisdiction.

## 13. Power to put Magistrate in charge of Sub-division.

Delegation of powers to District Magistrate.

## 14. Special Magistrates.

## 15. Benches of Magistrates.

Powers exercisable by Bench in absence of special direction.

## 16. Power to frame rules for guidance of Benches.

## 17. Subordination of Magistrates and Benches to District Magistrate; to Sub-divisional Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

*D.—Courts of Presidency Magistrates.*

## 18. Appointment of Presidency Magistrates.

## 19. Local limits of their jurisdiction.

## 20. Bombay Court of Petty Sessions.

## 21. Chief Magistrate.

*E.—Justices of the Peace.*

## 22. Justices of the Peace for the Mufassal.

## 23. Justices of the Peace for the Presidency-towns.

## 24. Present Justices of the Peace.

25. *Ex-officio* Justices of the Peace.*F.—Suspension and Removal*

## 26. Suspension and removal of Judges and Magistrates.

Suspension and removal of Justices of the Peace.

## CHAPTER III.

## POWERS OF COURTS.

*A.—Description of offences cognizable by each Court.*

## SECTIONS.

- 28. Offences under Penal Code.
- 29. Offences under other laws.
- 30. Offences not punishable with death.

*B.—Sentences which may be passed by Courts of various Classes.*

- 31. Sentences which High Courts and Sessions Judges may pass.
- 32. Sentences which Magistrates may pass.
- 33. Power of Magistrates to sentence to imprisonment in default of fine.  
Proviso as to certain cases.
- 34. Higher powers of certain District Magistrates.
- 35. Sentence in cases of conviction of several offences at one trial.  
Maximum term of punishment.

*C.—Ordinary and Additional Powers.*

- 36. Ordinary powers of Magistrates.
- 37. Additional powers conferrible on Magistrates.
- 38. Control of District Magistrates' investing power.

*D.—Conferment, Continuance and Cancellation of Powers.*

- 39. Mode of conferring powers.
- 40. Continuance of powers of officers transferred.
- 41. Powers may be cancelled.

## PART III.

## General Provisions.

## CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND  
PERSON; MAKING ARRESTS.

- 42. Public when to assist Magistrates and police.
- 43. Aid to persons other than Police-officer, executing warrant.
- 44. Public to give information of certain offences.
- 45. Village headmen, landholders and others bound to report certain matters.



## CHAPTER V.

## OF ARREST, ESCAPE AND RETAKING.

*A.—Arrest generally.*

## SECTIONS.

- 46. Arrest how made.  
Resisting endeavour to arrest.
- 47. Search of place entered by person sought to be arrested.
- 48. Procedure where ingress not obtainable.  
Breaking open *zanáná*.
- 49. Power to break open doors and windows for purposes of liberation.
- 50. No unnecessary restraint.
- 51. Search of arrested persons.
- 52. Mode of searching women.
- 53. Power to seize offensive weapons.

*B.—Arrest without Warrant.*

- 54. When police may arrest without warrant.
- 55. Arrest of *vagabonds*, habitual robbers, &c.
- 56. Procedure when Police-officer deposes subordinate to arrest without warrant.
- 57. Refusal to give name and residence.
- 58. Pursuit of offenders into other jurisdictions.
- 59. Arrest by private persons.  
Procedure on such arrest.
- 60. Person arrested to be taken before Magistrate or officer in charge of Police-station.
- 61. Person arrested not to be detained more than twenty-four hours.
- 62. Police to report apprehensions.
- 63. Discharge of person apprehended.
- 64. Offence committed in Magistrate's presence.
- 65. Arrest by or in presence of Magistrate.
- 66. Power, on escape, to pursue and retake.
- 67. Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

## CHAPTER VI.

## OF PROCESSES TO COMPEL APPEARANCE.

*A.—Summons.*

- 68. Form of summons.  
Summons by whom served.
- 69. Summons how served.  
Signature of receipt for summons.

## SECTIONS.

- 70. Service when person summoned cannot be found.
- 71. Procedure when receipt cannot be obtained.
- 72. Service on servant of Government or of Railway Company.
- 73. Service of summons outside local limits.
- 74. Proof of service in such cases, and when serving officer not present.

*B.—Warrant of Arrest.*

- 75. Form of warrant of arrest.  
Continuance of warrant of arrest.
- 76. Court may direct security to be taken.  
Recognizance to be forwarded.
- 77. Warrants to whom directed.  
Warrant to several persons.
- 78. Warrant may be directed to landholders, &c.
- 79. Warrant directed to Police-officer.
- 80. Notification of substance of warrant.
- 81. Person arrested to be brought before Court without delay.
- 82. Where warrant may be executed.
- 83. Warrant forwarded to Magistrate for execution outside jurisdiction.
- 84. Warrant directed to Police-officer for execution outside jurisdiction.
- 85. Procedure on arrest of person against whom warrant issued.
- 86. Procedure by Magistrate before whom person arrested is brought.

*C.—Proclamation and Attachment.*

- 87. Proclamation for person absconding.
- 88. Attachment of property of person absconding.
- 89. Restoration of attached property.

*D.—Other rules regarding Processes.*

- 90. Issue of warrant in lieu of, or in addition to, summons.
- 91. Power to take bond for appearance.
- 92. Arrest on breach of bond for appearance.
- 93. Provisions in this chapter generally applicable to summonses and warrants of arrest.

## CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER  
MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS  
WRONGFULLY CONFINED.

*A.—Summons to produce.*

- 94. Summons to produce document or other thing.
- 95. Procedure as to letters and telegrams.

*B.—Search-warrants.*

## SECTIONS.

- 96. When search-warrant may be issued.
- 97. Power to restrict warrant.
- 98. Search of house suspected to contain stolen property, forged documents, &c.
- 99. Disposal of things found in search beyond jurisdiction.

*C.—Discovery of persons wrongfully confined.*

- 100. Search for persons wrongfully confined.

*D.—General Provisions relating to searches.*

- 101. Direction, &c., of search-warrants.
- 102. Persons in charge of closed place to allow search.
- 103. Search to be made in presence of witnesses.  
Occupant of place searched may attend.

*E.—Miscellaneous.*

- 104. Power to impound document, &c., produced.
- 105. Magistrate may direct search in his presence.

## PART IV.

## Prevention of Offences.

## CHAPTER VIII.

## OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

*A.—Security for keeping the Peace on Conviction.*

- 106. Security for keeping the peace on conviction.

*B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.*

- 107. Security for keeping the peace in other cases.
- 108. Procedure of Magistrate, &c., not empowered to act under section 107.
- 109. Security for good behaviour from vagrants and suspected persons.
- 110. Security for good behaviour from habitual offenders.
- 111. Proviso as to European vagrants.
- 112. Order to be made.
- 113. Procedure in respect of person present in Court.
- 114. Summons or warrant in case of person not so present.

SECTIONS.

- 115. Copy of order under section 112 to accompany summons or warrant.
- 116. Power to dispense with personal attendance.
- 117. Inquiry as to truth of information.
- 118. Order to give security.
- 119. Discharge of person informed against.

*C.—Proceedings in all Cases subsequent to Order to furnish Security.*

- 120. Commencement of period for which security is required.
- 121. Contents of bond.
- 122. Power to reject sureties.
- 123. Imprisonment in default of security.  
Proceedings when to be laid before High Court or Court of Session.  
Kind of imprisonment.
- 124. Power to release persons imprisoned for failing to give security.
- 125. Power of District Magistrate to cancel any bond for keeping the Peace.
- 126. Discharge of sureties.

---

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

- 127. Assembly to disperse on command of Magistrate or Police-officer.
- 128. Use of civil force to disperse.
- 129. Use of military force.
- 130. Duty of officer commanding troops required by Magistrate to disperse assembly.
- 131. Power of Commissioned Military officers to disperse assembly.
- 132. Protection against prosecution for acts done under this chapter.

---

CHAPTER X.

PUBLIC NUISANCES.

- 133. Conditional order for removal of nuisance.
- 134. Service or notification of order.
- 135. Person to whom order is addressed to obey, or show cause or claim jury.
- 136. Consequence of his failing to do so.
- 137. Procedure where he appears to show cause.
- 138. Procedure where he claims jury.
- 139. Procedure where jury finds Magistrate's order to be reasonable.
- 140. Procedure on order being made absolute:  
Consequences of disobedience to order.

## SECTIONS.

- 141. Procedure on failure to appoint jury or omission to return verdict.
- 142. Injunction pending inquiry.
- 143. Magistrate may prohibit repetition or continuance of public nuisances.

## CHAPTER XI.

## TEMPORARY ORDERS IN URGENT CASES.

- 144. Power to issue order absolute at once in urgent cases of nuisance.

## CHAPTER XII.

## DISPUTES AS TO IMMOVEABLE PROPERTY.

- 145. Procedure where dispute concerning land, &c., is likely to cause breach of peace.  
Inquiry as to possession.  
Party in possession to retain possession until legally evicted.
- 146. Power to attach subject of dispute.
- 147. Disputes concerning easements, &c.
- 148. Local inquiry.  
Order as to costs.

## CHAPTER XIII.

## PREVENTIVE ACTION OF THE POLICE.

- 149. Police to prevent cognizable offences.
- 150. Information of design to commit such offences.
- 151. Arrest to prevent such offences.
- 152. Prevention of injury to public property.
- 153. Inspection of weights and measures.

## PART V.

Information to the Police and their Powers to Investigate.

## CHAPTER XIV.

- 154. Information in cognizable cases.
- 155. Information in non-cognizable cases.  
Investigation into non-cognizable cases.

## SECTIONS.

156. Investigation into cognizable cases.
157. Procedure where cognizable offence suspected.
  - (a) Where local investigation dispensed with.
  - (b) Where Police-officer in charge sees no sufficient ground for investigation.
158. Reports under section 157 how submitted.
159. Power to hold investigation or preliminary inquiry.
160. Police officer's power to require attendance of witnesses.
161. Examination of witnesses by Police.
162. Statements to Police not to be signed or admitted in evidence.
163. No inducement to be offered.
164. Power to record statements and confessions.
165. Search by Police-officer.
166. When officer in charge of Police-station may require another to issue search-warrant.
167. Procedure when investigation cannot be completed in twenty-four hours.
168. Report of investigation by subordinate Police-officer.
169. Release of accused when evidence deficient.
170. Case to be sent to Magistrate when evidence is sufficient.
171. Complainants and witnesses not to be required to accompany Police-officer.
 

Complainants and witnesses not to be subjected to restraint.  
 Recusant complainant or witness may be forwarded in custody.
172. Diary of proceedings in investigation.
173. Report of Police-officer.
174. Police to inquire and report on suicide, &c.
175. Power to summon persons.
176. Inquiry by Magistrate into cause of death.  
 Power to disinter corpse.

## PART VI.

## Proceedings in Prosecutions.

## CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN  
INQUIRIES AND TRIALS.*A.—Place of Inquiry or Trial.*

177. Ordinary place of inquiry and trial.
178. Power to order cases to be tried in different Sessions divisions.

179. Accused triable in district where act is done, or where consequence ensues.
180. Place of trial where act is offence by reason of relation to other offence.
181. Being a thug or belonging to a gang of dacoits, escape from custody, &c.

## Stealing.

182. Place of inquiry or trial where scene of offence is uncertain,  
or not in one district only ;  
or where offence is continuing ;  
or consists of several acts.
183. offence committed on a journey.
184. Offences against Railway, Telegraph, Post Office and Arms Acts.
185. High Court to decide, in case of doubt, district where inquiry or  
trial shall take place.
186. Power to issue summons or warrant for offence committed beyond  
local jurisdiction.  
Magistrate's procedure on arrest.
187. Procedure where warrant issued by subordinate Magistrate.
188. Liability of British subjects for offences committed out of British India.  
Political Agent to certify fitness of inquiry into charge.
189. Power to direct copies of depositions and exhibits to be received in  
evidence.
190. "Political Agent" defined.  
*B.—Conditions requisite for Initiation of Proceedings.*
191. Cognizance of offences by Magistrates.
192. Transfer of cases by Magistrates.
193. Cognizance of offences by Courts of Session.  
Cases to be tried by Additional and Joint Sessions Judges ;  
by Assistant Sessions Judges.
194. Cognizance of offences by High Court.
195. Prosecution for contempts of lawful authority of public servants.  
Prosecution for certain offences against public justice.  
Prosecution for certain offences relating to documents given in  
evidence.  
Nature of sanction necessary.
196. Prosecution for offences against the State.
197. Prosecution of Judges and public servants.  
Power of Government as to prosecution.
198. Prosecution for breach of contract, defamation and offences against  
marriage.
199. Prosecution for adultery or enticing a married woman,

## CHAPTER XVI.

## OF COMPLAINTS TO MAGISTRATES.

## SECTIONS.

- 200. Examination of complainant.
- 201. Procedure by Magistrate not competent to take cognizance of the case.
- 202. Postponement of issue of process.
- 203. Dismissal of complaint.

## CHAPTER XVII.

## OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

- 204. Issue of process.
- 205. Magistrate may dispense with personal attendance of accused.

## CHAPTER XVIII.

## OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

- 206. Power to commit for trial.
- 207. Procedure in inquiries preparatory to commitment.
- 208. Taking of evidence produced.  
Process for production of further evidence.
- 209. When accused person to be discharged.
- 210. When charge is to be framed.  
Charge to be explained, and copy furnished, to accused.
- 211. List of witnesses for defence on trial.  
Further list.
- 212. Power of Magistrate to examine such witnesses.
- 213. Order of commitment.
- 214. Person charged outside Presidency-towns jointly with European British subject.
- 215. Quashing commitments under section 213 or 214.
- 216. Summons to witnesses for defence when accused is committed.  
Refusal to summon unnecessary witness unless deposit made.
- 217. Bond of complainants and witnesses.  
Detention in custody in case of refusal to attend or to execute bond.
- 218. Commitment when to be notified.  
Charge, &c. to be forwarded to High Court or Court of Session.  
English translation to be forwarded to High Court.
- 219. Power to summon supplementary witnesses.
- 220. Custody of accused pending trial.





## SECTIONS.

- 243. Conviction on admission of truth of accusation.
- 244. Procedure when no such admission is made.
- 245. Acquittal.  
Sentence.
- 246. Finding not limited by complaint or summons.
- 247. Non-appearance of complainant.
- 248. Withdrawal of complaint.
- 249. Power to stop proceedings when no complainant.
- 250. Frivolous or vexatious complaints.  
Recovery of compensation.

## CHAPTER XXI.

## OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

- 251. Procedure in warrant-cases.
- 252. Evidence for prosecution. .
- 253. Discharge of accused.
- 254. Charge to be framed when offence appears proved. \*
- 255. Plea.
- 256. Defence. .
- 257. Process for compelling production of evidence at instance of accused.
- 258. Acquittal.  
Conviction.
- 259. Absence of complainant.

## CHAPTER XXII.

## .. OF SUMMARY TRIALS.

- 260. Power to try summarily.
- 261. Power to invest Bench of Magistrates invested with less power.
- 262. Procedure for summons and warrant-cases applicable.  
Limit of imprisonment.
- 263. Record in cases where there is no appeal.
- 264. Record in appealable cases.
- 265. Language of record and judgment.  
Bench may be authorized to employ clerk.

## CHAPTER XXIII.

## OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

*A.—Preliminary.*

- 266. "High Court" defined.
- 267. Trials before High Court to be by jury.

## SECTIONS.

268. Trials before Court of Session to be by jury or with assessors.  
 269. Local Government may order trials before Court of Session to be by jury.  
 270. Trial before Court of Session to be conducted by Public Prosecutor.

*B.—Commencement of Proceedings.*

271. Commencement of trial.  
 Plea of guilty.  
 272. Refusal to plead or claim to be tried.  
 Trial by same jury or assessors of several offenders in succession.  
 273. Entry on unsustainable charge.  
 Effect of entry.

*C.—Choosing a Jury.*

274. Number of jury.  
 275. Jury for trial of persons not Europeans or Americans before Court of Session.  
 276. Jurors to be chosen by lot  
 Proviso.  
 Existing practice maintained.  
 Persons not summoned when eligible  
 Trials before special jurors.  
 277. Names of jurors to be called.  
 Objection to jurors.  
 Objection without grounds stated.  
 278. Grounds of objection.  
 279. Decision of objection.  
 Supply of place of juror against whom objection allowed.  
 280. Foreman of jury.  
 281. Swearing of jurors.  
 282. Procedure when juror ceases to attend, &c.  
 283. Discharge of jury in case of sickness of prisoner.

*D.—Choosing Assessors.*

284. Assessors how chosen.  
 285. Procedure when assessor is unable to attend.

*E.—Trial to Close of Cases for Prosecution and Defence.*

286. Opening case for prosecution.  
 Examination of witnesses.  
 287. Examination of accused before Magistrate to be evidence.  
 288. Evidence given at preliminary inquiry admissible.

## SECTIONS.

- 289. Procedure after examination of witnesses for prosecution.
- 290. Defence.
- 291. Right of accused as to examination and summoning of witnesses.
- 292. Prosecutor's right of reply.
- 293. View by jury or assessors.
- 294. When juror or assessor may be examined.
- 295. Jury or assessors to attend at adjourned sitting.
- 296. Locking-up jury.

*F.—Conclusion of Trial in Cases tried by Jury.*

- 297. Charge to jury.
- 298. Duty of Judge.
- 299. Duty of jury.
- 300. Retirement to consider.
- 301. Delivery of verdict.
- 302. Procedure where jury differ.
- 303. Verdict to be given on each charge.  
Judge may question jury.  
Questions and answers to be recorded.
- 304. Amending verdict.
- 305. Verdict in High Court when to prevail.  
Discharge of jury in other cases.
- 306. Verdict in Court of Session when to prevail.
- 307. Procedure where Sessions Judge disagrees with verdict.

*G.—Re-trial of Accused after Discharge of Jury.*

- 308. Re-trial of accused after discharge of jury.

*H.—Conclusion of Trial in Cases tried with Assessors.*

- 309. Delivery of opinions of assessors.  
Judgment.

*I.—Procedure in Case of previous Conviction.*

- 310. Procedure in case of previous conviction.

*J.—List of jurors for High Court, and summoning Jurors for that Court.*

- 311. Jurors' book.  
Exemption of special jurors.
- 312. Number of special jurors.
- 313. Lists of common and special jurors.  
Discretion of officer preparing lists.
- 314. Publication of lists, preliminary and revised.

**SECTIONS.**

- 315. Number of jurors to be summoned in Presidency-town.  
Supplementary summons.
- 316. Summoning jurors outside the Presidency-towns.
- 317. Military jurors.
- 318. Failure of jurors to attend.

*K.—List of Jurors and Assessors for Court of Session, and summoning  
Jurors and Assessors for that Court.*

- 319. Liability to serve as jurors or assessors.
- 320. Exemptions.
- 321. List of jurors and assessors.
- 322. Publication of list.
- 323. Objections to list.
- 324. Revision of list.
- 325. Annual revision of list.
- 326. District Magistrate to summon jurors and assessors.
- 327. Power to summon another set of jurors or assessors.
- 328. Form and service of summons.
- 329. When Government or railway servant may be excused.
- 330. Court may excuse attendance of juror or assessor.
- 331. List of jurors and assessors attending.
- 332. Penalty for non-attendance of juror or assessor.

*L.—Special Provisions for High Courts.*

- 333. Power of Advocate General to stay prosecution.
- 334. Time of holding sittings.
- 335. Place of holding sittings.  
Notice of sittings.
- 336. Place of trial of European British subjects.

---

## CHAPTER XXIV.

### GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

- 337. Tender of pardon to accomplice.
- 338. Power to direct tender of pardon.
- 339. Commitment of person to whom pardon has been tendered.
- 340. Right of accused to be defended.
- 341. Procedure where accused does not understand proceedings.
- 342. Power to examine the accused.
- 343. No influence to be used to induce disclosures.

## SECTIONS.

- 344. Power to postpone or adjourn proceedings.  
Remand.  
Reasonable cause for remand.
- 345. Compounding offences.
- 346. Procedure of Provincial Magistrate in cases which he cannot dispose of.
- 347. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.
- 348. Trial of persons previously convicted of offences against coinage, stamp-law or property.
- 349. Procedure when Magistrate cannot pass sentence sufficiently severe.
- 350. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.
- 351. Detention of offenders attending Court.
- 352. Courts to be open.

---

 CHAPTER XXV.

## OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

- 353. Evidence to be taken in presence of accused.
- 354. Manner of recording evidence outside Presidency-towns.
- 355. Record in summons-cases, and in trials of certain offences by first and second class Magistrates.
- 356. Record in other cases outside Presidency-towns.  
Evidence given in English.  
Memorandum when evidence not taken down by the Magistrate or Judge himself.
- 357. Language of record of evidence.
- 358. Option to Magistrate in cases under section 355.
- 359. Mode of recording evidence under section 356 or section 357.
- 360. Procedure in regard to such evidence when completed.
- 361. Interpretation of evidence to accused or his pleader.
- 362. Record of evidence in Presidency Magistrates' Courts.
- 363. Remarks respecting demeanour of witness.
- 364. Examination of accused how recorded.
- 365. Record of evidence in High Court.

---

 CHAPTER XXVI.

## OF THE JUDGMENT.

- 366. Mode of delivering judgment.
- 367. Language of judgment.  
Contents of judgment.  
Judgment in alternative.

## SECTIONS.

- 368. Sentence of death.  
Sentence of transportation.
  - 369. Court not to alter judgment.
  - 370. Presidency Magistrate's judgment.
  - 371. Judgment to be explained and copy given to accused.  
Case of person sentenced to death.
  - 372. Judgment when to be translated.
  - 373. Court of Session to send copy of finding and sentence to District Magistrate.
- 

## CHAPTER XXVII.

## OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

- 374. Sentence of death to be submitted by Court of Session.
  - 375. Power to direct further inquiry to be made or additional evidence to be taken.
  - 376. Power of High Court to confirm sentence or annul conviction.
  - 377. Confirmation or new sentence to be signed by two Judges.
  - 378. Procedure in case of difference of opinion.
  - 379. Procedure in cases submitted to High Court for confirmation.
  - 380. Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.
- 

## CHAPTER XXVIII.

## OF EXECUTION.

- 381. Execution of order passed under section 376.
- 382. Postponement of capital sentence on pregnant woman.
- 383. Execution of sentences of transportation or imprisonment in other cases.
- 384. Direction of warrant for execution.
- 385. Warrant with whom to be lodged.
- 386. Warrant for levy of fine.
- 387. Effect of such warrant.
- 388. Suspension of execution of sentence of imprisonment.
- 389. Who may issue warrant.
- 390. Execution of sentence of whipping only.
- 391. Execution of sentence of whipping, in addition to imprisonment.
- 392. Mode of inflicting punishment.  
Limit of number of stripes.
- 393. Not to be executed by instalments.  
Exemptions.

SECTIONS.

- 394. Whipping not to be inflicted if offender not in fit state of health.  
Stay of execution.
- 395. Procedure if punishment cannot be inflicted under section 394.
- 396. Execution of sentences on escaped convicts.
- 397. Sentence on offender already sentenced for another offence.
- 398. Saving as to sections 396 and 397.
- 399. Confinement of youthful offenders in reformatories.
- 400. Return of warrant on execution of sentence,

---

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

- 401. Power to suspend or remit sentences.
- 402. Power to commute punishment.

---

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

- 403. Person once convicted or acquitted not to be tried for same offence,

---

PART VII.

Of Appeal, Reference and Revision.

---

CHAPTER XXXI.

OF APPEALS.

- 404. Unless otherwise provided, no appeal to lie.
- 405. Appeal from order rejecting application for restoration of attached property.
- 406. Appeal from order requiring security for good behaviour.
- 407. Appeal from sentence of Magistrate of the second or third class.  
Transfer of appeals to first class Magistrate.
- 408. Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.
- 409. Appeals to Court of Session how heard.
- 410. Appeal from sentence of Court of Session.
- 411. Appeal from sentence of Presidency Magistrate.
- 412. No appeal in certain cases when accused pleads guilty.
- 413. No appeal in petty cases.
- 414. No appeal from certain summary convictions.
- 415. Proviso to sections 413 and 414.
- 416. Saving of sentences on European British subjects.



## SECTIONS.

- 417. *Appeal on behalf of Government in case of acquittal.*
- 418. *Appeal on what matters admissible.*
- 419. *Petition of appeal.*
- 420. *Procedure when appellant in jail.*
- 421. *Summary rejection of appeal.*
- 422. *Notice of appeal.*
- 423. *Powers of Appellate Court in disposing of appeal.*
- 424. *Judgments of subordinate Appellate Courts.*
- 425. *Order by High Court on appeal to be certified to lower Court.*
- 426. *Suspension of sentence pending appeal.*  
*Release of appellant on bail.*
- 427. *Arrest of accused in appeal from acquittal.*
- 428. *Appellate Court may take further evidence or direct it to be taken.*
- 429. *Procedure where Judges of Court of appeal are equally divided.*
- 430. *Finality of orders on appeal.*
- 431. *Abatement of appeals.*

---

 CHAPTER XXXII.

## OF REFERENCE AND REVISION.

- 432. *Reference by Presidency Magistrate to High Court.*
- 433. *Disposal of case according to decision of High Court.*  
*Direction as to costs.*
- 434. *Power to reserve questions arising in original jurisdiction of High Court.*  
*Procedure when question reserved.*
- 435. *Power to call for records of inferior Courts.*
- 436. *Power to order commitment.*
- 437. *Power to order inquiry.*
- 438. *Report to High Court.*
- 439. *High Court's powers of revision.*
- 440. *Optional with Court to hear parties.*
- 441. *Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.*
- 442. *High Court's order to be certified to lower Court or Magistrate.*

---

 PART VIII.

## Special Proceedings.

---

 CHAPTER XXXIII.

## CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

- 443. *Magistrates who may inquire into and try charges against European British subjects.*

## SECTIONS.

- 444. Sessions Judge to be an European British subject.  
Assistant Sessions Judge to have held office for three years and to be specially empowered.
- 445. Cognizance of offence committed by European British subject.
- 446. Sentences which may be passed by provincial Magistrates.
- 447. When commitment is to be to Court of Session and when to High Court.
- 448. Trial of offences of which one is, and the others are not, punishable with death or transportation for life.
- 449. Sentences which may be passed by Court of Session.  
Procedure when Sessions Judge finds his powers inadequate.
- 450. Procedure when Sessions Judge is not an European British subject.
- 451. Mixed jury for trial of European British subjects.
- 452. Trial of European British subject and Native jointly accused.  
When Native may claim separate trial.
- 453. Procedure on claim of person to be dealt with as European British subject.
- 454. Failure to plead status a waiver.
- 455. Trial under this chapter of person not an European British subject.
- 456. Right of European British subject unlawfully detained to apply for order to be brought before High Court.
- 457. Procedure on such application.
- 458. Territories throughout which High Court may issue such orders.
- 459. Application of Acts conferring jurisdiction on Magistrates or Courts of Session.
- 460. Jury for trial of Europeans or Americans.
- 461. Jury when European or American charged jointly with one of another race.
- 462. Summoning and empanelling jurors under section 451 or 460.
- 463. Conduct of criminal proceedings against European British subjects, &c.

---

 CHAPTER XXXIV.

## LUNATICS.

- 464. Procedure in case of accused being lunatic.
- 465. Procedure in case of person committed before Court of Session or High Court being lunatic.
- 466. Release of lunatic pending investigation or trial.  
Custody of lunatic.
- 467. Resumption of inquiry or trial.
- 468. Procedure on accused appearing before Magistrate or Court.
- 469. When accused appears to have been insane.
- 470. Judgment of acquittal on ground of lunacy.

## SECTIONS.

- 471. Person acquitted on such ground to be kept in safe custody.
- 472. Lunatic prisoners to be visited by Inspector-General. ●
- 473. Procedure where lunatic prisoner is reported capable of making his defence.
- 474. Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.
- 475. Delivery of lunatic to care of relative.

---

 CHAPTER XXXV.

 PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE  
 ADMINISTRATION OF JUSTICE.

- 476. Procedure in cases mentioned in section 195.
- 477. Power of Court of Session as to such offences committed before itself.
- 478. Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.
- 479. Procedure of Civil Court in such cases.
- 480. Procedure in certain cases of contempt.
- 481. Record in such cases.
- 482. Procedure where Court considers that case should not be dealt with under section 480.
- 483. When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.
- 484. Discharge of offender on submission of apology.
- 485. Imprisonment or committal of person refusing to answer or produce document.
- 486. Appeals from convictions in contempt-cases.
- 487. Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

---

 CHAPTER XXXVI.

## OF THE MAINTENANCE OF WIVES AND CHILDREN.

- 488. Order for maintenance of wives and children.  
     Enforcement of order.  
     Proviso.
- 489. Alteration in allowance.
- 490. Enforcement of order of maintenance.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A "HABEAS CORPUS."

SECTIONS.

491. Power to issue directions of the nature of a *habeas corpus*.

---

PART IX.

Supplementary Provisions.

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CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. Power to appoint Public prosecutors.  
 493. Public prosecutor may plead in all Courts in cases under his charge, Pleaders, privately instructed, to be under his direction.  
 494. Effect of withdrawal from prosecution.  
 495. Permission to conduct prosecution.

---

CHAPTER XXXIX.

OF BAIL.

496. Bail to be taken in case of bailable offence.  
 497. When bail may be taken in case of non-bailable offence.  
 498. Power to direct admission to bail or reduction of bail.  
 499. Bond of accused and sureties.  
 500. Discharge from custody.  
 501. Power to order sufficient bail when that first taken is insufficient.  
 502. Discharge of sureties.

---

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. When attendance of witness may be dispensed with.  
 Issue of commission, and procedure thereunder.  
 504. Commission in case of witness being within Presidency-town.  
 505. Parties may examine witness.  
 506. Power of Provincial Subordinate Magistrate to apply for issue of commission.  
 507. Return of commission.  
 508. Adjournment of inquiry or trial.

## CHAPTER XLI.

## SPECIAL RULES OF EVIDENCE.

## SECTIONS.

- 509. Deposition of medical witness.  
Power to summon medical witness.
- 510. Report of Chemical Examiner.
- 511. Previous conviction or acquittal how proved.
- 512. Record of evidence in absence of accused.

## CHAPTER XLII.

## PROVISIONS AS TO BONDS.

- 513. Deposit instead of recognizance.
- 514. Procedure on forfeiture of bond.
- 515. Appeals from, and revision of, orders under section 514.
- 516. Power to direct levy of amount due on certain recognizances.

## CHAPTER XLIII.

## OF THE DISPOSAL OF PROPERTY.

- 517. Order for disposal of property regarding which offence committed.
- 518. Order may take form of reference to District or Sub-Divisional Magistrate.
- 519. Payment to innocent purchaser of money found on accused.
- 520. Stay of order under section 517, 518 or 519.
- 521. Destruction of libellous and other matter.
- 522. Power to restore possession of immoveable property.
- 523. Procedure by police upon seizure of property taken under section 51 or stolen.  
Procedure where owner of property seized unknown.
- 524. Procedure where no claimant appears within six months.
- 525. Power to sell perishable property.

## CHAPTER XLIV.

## OF THE TRANSFER OF CRIMINAL CASES.

- 526. High Court may transfer case, or itself try it.  
Notice to Public Prosecutor of application under this section.
- 527. Power of Governor-General in Council to transfer criminal cases and appeals.

## SECTIONS.

528. District or Sub-Divisional Magistrate may withdraw or refer cases.  
Power to authorize District Magistrate to withdraw classes of cases.
- 

## CHAPTER XLV.

## OF IRREGULAR PROCEEDINGS.

529. Irregularities which do not vitiate proceedings.  
530. Irregularities which vitiate proceedings.  
531. Proceedings in wrong place.  
532. When irregular commitments may be validated.  
533. Non-compliance with provisions of sections 164 or 364.  
534. Omission to ask question prescribed by section 454, clause 2.  
535. Effect of omission to prepare charge.  
536. Trial by jury of offence triable with assessors.  
Trial with assessors of offence triable by jury.  
537. Finding or sentence when reversible by reason of error or omission  
in charge or other proceedings.  
538. Distress not illegal nor distrainer a trespasser for defect or want of  
form in proceedings.
- 

## CHAPTER XLVI.

## MISCELLANEOUS.

539. Courts and persons before whom affidavits may be sworn.  
540. Power to summon material witness, or examine person present.  
541. Power to appoint place of imprisonment.  
542. Power of Presidency Magistrate to order prisoner in jail to be brought  
up for examination.  
543. Interpreter to be bound to interpret truthfully.  
544. Expenses of complainants and witnesses.  
545. Power of Court to pay expenses or compensation out of fine.  
546. Payments to be taken into account in subsequent suit.  
547. Moneys ordered to be paid recoverable as fines.  
548. Copies of proceedings.  
549. Delivery to-military authorities of persons liable to be tried by Court-  
martial.  
Apprehension of such persons.  
550. Powers of superior officers of police.  
551. Power to compel restoration of abducted females.  
552. Compensation to person groundlessly given in charge in Presidency-  
town.

## SECTIONS.

553. Power of chartered High Courts to make rules for inspection of records of subordinate Courts.  
Power of other High Courts to make rules for other purposes.
554. Forms.
555. Case in which Judge or Magistrate is personally interested.
556. power to decide language of Courts.
557. Powers of Governor General in Council and Local Government exercisable from time to time.
558. Pending cases.

SCHEDULE I.—Enactments repealed.

SCHEDULE II.—Tabular Statement of offences.

SCHEDULE III.—Ordinary powers of Provincial Magistrates.

SCHEDULE IV.—Additional powers with which Provincial Magistrates may be invested.

SCHEDULE V.—Forms.

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THE  
CODE OF CRIMINAL PROCEDURE

BEING

**Act No. X of 1882.**

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 6th March, 1882.)*

An Act to consolidate and amend the law relating to Criminal Procedure.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

**PART I.**

PRELIMINARY.

CHAPTER I.

Short title.  
Commencement.

1. This Act may be called "The Code of Criminal Procedure, 1882": and shall come into force on the first day of January, 1883;

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law now in force, or shall apply to—

Local extent.

(a) The Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(b) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;

(c) heads of villages in the Presidency of Fort St. George; or

(d) village Police-officers in the Presidency of Bombay;

(e) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras.



2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate", "Subordinate Magistrate, first class", and "Subordinate Magistrate, second class", shall respectively be deemed to mean "Magistrate of the first class", "Magistrate of the second class", and "Magistrate of the third class"; the expression "Magistrate of a division of district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate", and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

(a) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence ; but does not include the report of a Police-officer :

(b) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorized by a Magistrate in this behalf :

(c) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court :

(d) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken :

(e) "Writing" and "written" include "printing", "lithography", "photography", "engraving", and every other mode in which words or figures can be expressed on paper or on any substance :

Sub-division": (f) "Sub-division" means a sub-division made under this Code of a District :

'Province": (g) "Province" means the territories for the time being under the administration of any Local Government :

(h) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay :

Presidency-town": (i) "High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Court of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the Recorder of Rangoon :

(i) "High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Court of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the Recorder of Rangoon :

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area ;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf :

"Chief Justice": (j)\* "Chief Justice" includes also the senior Judge of the Chief Court of the Punjab and the Recorder of Rangoon.

(k) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf :

(l) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown :

(m) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor ; and any person conducting a prosecution on behalf of Her Majesty

in any High Court in the exercise of its original criminal jurisdiction :

(n) "Pleader" used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney

of a High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding :

(o) "Police-station" means any post declared, generally or specially, by the Local Government to be a Police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf ; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent\* from the station house or unable from illness to perform his

duties, the Police-officer present at the station house who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other Police-officer so present :

(p) "Offence" means any act or omission made punishable by any law for the time being in force :

(q) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant :

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant :

(r) "Bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force ; and "non-bailable offence" means any other offence :

(s) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months :

(t) "Summons-case" means a case relating to an offence not so punishable :

(u) "European British subject" means—

(1) any subject of Her Majesty born, naturalized or domiciled in the United kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal ;

(2) any child or grand-child of any such person by legitimate descent ;

(v) "Chapter" means a chapter of this Code ; and "Schedule" means a schedule hereto annexed :

(w) "Place" includes also a house, building, tent and vessel.

Words which refer to acts done extend also to illegal omissions ; and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained ; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

## PART II.

## Constitution and Powers of Criminal Courts and Offices.

## CHAPTER II.

## OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

*A.—Classes of Criminal Courts.*

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :

II.—Courts of Presidency Magistrates :

III.—Courts of Magistrates of the first class :

IV.—Courts of Magistrates of the second class :

V.—Courts of Magistrates of the third class.

*B.—Territorial Divisions.*

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions :

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

*C.—Courts and offices outside the Presidency-towns.*

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate, subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may delegate its powers under this section to the District Magistrate.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Except as otherwise provided by any order under this section, every Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:—

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench for conducting trials;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

#### *D.—Courts of Presidency Magistrates.*

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Local limits of their jurisdiction.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous Sanction of the Local Government, make rules consistent with this Code to regulate—

Chief Magistrate.

(a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;

(b) the times and places at which Benches of Magistrates shall sit ;

(c) the constitution of such Benches ; and

(d) the mode of settling differences of opinion which may arise between Magistrates in session.

#### *E.—Justices of the Peace.*

Justices of the Peace for the Mufassal.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India. Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

#### *F.—Suspension and Removal.*

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government.

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only, shall not be suspended or removed from office by any other authority.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

### CHAPTER III.

#### POWERS OF COURTS.

##### *A.—Description of offences cognizable by each Court.*

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code; provided that—

(a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;



(b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

*B.—Sentences which may be passed by Courts of various Classes.*

Sentences which High Courts and Sessions Judges may pass. 31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation\* passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

Sentences which Magistrates may pass. 32. The Courts of Magistrates may pass the following sentences, namely:—

(a) Courts of Presidency Magistrates and of Magistrates of the first class: Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law;

Fine not exceeding one thousand rupees;

Whipping.

(b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law;

Fine not exceeding two hundred rupees;

Whipping.

(c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding one month;

Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: provided that the term is not in excess of the Magistrate's powers under this Code.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge.\*

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment. Provided as follows:—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

*C.—Ordinary and Additional Powers.*

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the ordinary powers of Magistrates, powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

*D.—Conferment, Continuance and Cancellation of Powers.*

39. In conferring powers under this Code, the Local Government may by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

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PART III.

## General Provisions.

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CHAPTER IV.

## OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns.

(a) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest ;

(b) in the prevention of a breach of the peace, or of any injury, attempted to be committed to any railway, canal, telegraph or public property ; or

(c) in the suppression of a riot or an affray.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code, (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 550, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

\* Any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460, shall be deemed to be an offence for the purposes of this section.

45.† Every village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the Officer in charge of the nearest police-station, whichever, is the nearer, any information which he may obtain respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent :

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender ;

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147 or 148, of the Indian Penal Code ;

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances ;

† (e) the commission of, or intention to commit, at any place out of British India, near such village any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

In this section—

(i) 'village' includes village-lands ; and

\* Act III of 1889.

† Act III of 1894.

‡ Act X of 1894)

(ii) the expression 'proclaimed offender' includes any person proclaimed as an offender by any Court or authority established or continued by the Governor General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

† (f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

45 A. Subject to rules in this behalf to be made by the Local Government, the District Magistrate may from time to time appoint one or more persons to be village-headman for the purposes of the last foregoing section in any village for which there is no such headman appointed under any other law.

## CHAPTER V.

### OF ARREST, ESCAPE AND RETAKING.

#### A.—Arrest generally.

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, or a Police-officer, to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such apartment give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who having lawfully entered for the purpose of making an arrest, is detained therein.

50. The person arrested shall not be subject to more restraint than is necessary to prevent his escape.

51. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

Whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail or is unable to furnish bail,



the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

52. Whenever it is necessary to cause a woman to be searched, the Mode of searching search shall be made by another woman, with strict regard to decency.

53. The officer or other person making any arrest under this Code may Power to seize offensive weapons. take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

### *B.—Arrest without Warrant.*

When police may arrest without warrant.

54. Any Police-officer may, without an order from a Magistrate and without a warrant, arrest—

*first*—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned ;

*secondly*—any person having in his possession, without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

*thirdly*—any person who has been proclaimed as an offender either under this Code or by order of the Local Government ;

*fourthly*—any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ;

*fifthly*—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; and

*sixthly*—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

This section applies to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, &c.

55. Any officer in charge of a Police-station may, in like manner arrest, or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence ; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself ; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or



who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

This section applies to the police in the towns of Calcutta and Bombay.\*

56. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

This section applies to the police in the towns of Calcutta and Bombay.\*

57. When any person in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

58. A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

62. Officers in charge of Police-stations shall report to the District Magistrate, or if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

63. No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

## CHAPTER VI.

### OF PROCESSES TO COMPEL APPEARANCE.

#### A.—*Summons.*

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Such summons shall be served by a Police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Summons how served.

Every person of whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Signature of receipt for summons.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when receipt cannot be obtained.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Service on servant, of Government or of Railway Company.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Proof of service in such cases, and when serving officer is not present.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

#### *B.—Warrant of Arrest.*

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Form of warrant of arrest.

Continuance of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement shall state (a) the number of sureties, (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (c) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the Bond to the Court.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

80. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

81. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Warrant forwarded to Magistrate for execution outside jurisdiction. Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise

to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

84. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take Warrant directed to Police-officer for execution outside jurisdiction. it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Procedure on arrest of person against whom warrant issued. Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which Procedure by Magistrate before whom person arrested is brought. issued the warrant, direct his removal in custody to such Court: provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

*C.—Proclamation and Attachment.*

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed, by the District Magistrate or Chief Presidency Magistrate\* within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

\* Act X. of 1886.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying there-out all costs incurred in consequence of the attachment, be delivered to him.

*D.—Other rules regarding processes.*

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance or arrest—  
Issue of warrant in lieu of, or in addition to summons. any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons of warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.  
Power to take bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.  
Arrest on breach of bond for appearance.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.  
Provisions in this chapter generally applicable to summonses and warrants of arrest.

## CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER  
MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS  
WRONGFULLY CONFINED.*A.—Summons to produce.*

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta, and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

*B.—Search-warrants.*

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.



**98. If a District Magistrate, Sub-divisional Magistrate, Presidency**

Search of house suspected to contain stolen Property, forged documents &c.

Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for

the deposit or sale of stolen property.

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging.

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place.

he may by his warrant authorize any Police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

\*“The provisions of this section with respect to—

(a) counterfeit coin,

(b) coin suspected to be counterfeit, and

(c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply, respectively, to—

(a) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force, under section 19 of the Sea Customs Act, 1878,

(b) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and

(c) instruments or materials for making pieces of metal in contravention of that Act.”

**99. When, in the execution of a search-warrant at any place beyond**

Disposal of things found in search beyond jurisdiction.

the local limits of the jurisdiction of the Court which issued the same, any of the things for which

search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

*C.—Discovery of persons wrongfully confined.*

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

*D.—General Provisions relating to Searches.*

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

*E.—Miscellaneous.*

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

## PART IV.

## Prevention of Offences.

## CHAPTER VIII.

## OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

*A.—Security for keeping the Peace on Conviction.*

106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

*B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.*

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-

Security for good behaviour from habitual offenders.

divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the

Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

111. The provisions of sections 109 and 110 do not apply to European

Proviso as to European vagrants.

British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to any person to show

Orders to be made.

cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

113. If the person in respect of whom such order is made is present

Procedure in respect of person present in Court.

in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

114. If such person is not present in Court, the Magistrate shall issue

Summons or warrant in case of person not so present.

a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court :

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to

fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116. The Magistrate may, if he see sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

117. When an order under section 112, has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly;

Provided—

*first*—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

*secondly*—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

*thirdly*—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119. If, on any inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him,

*C.—Proceedings in all Cases subsequent to Order to furnish Security.*

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

122. A Magistrate may refuse to accept any security for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is unfit person.

123. If any person ordered to give surety under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple, as the Court or Magistrate in each case directs.

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124 be deemed to be an order made under section 106 or section 118, as the case may be.

## CHAPTER IX.

### UNLAWFUL ASSEMBLIES.

127. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or Police-Officer.

This section applies to the police in the towns of Calcutta and Bombay.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of civil force to disperse.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Noncommissioned officer in command of any soldiers in Her Majesty's army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thence forward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

(a) no Magistrate or Police-officer acting under this chapter in good faith,

(b) no officer acting under section 131 in good faith,

(c) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey, shall be deemed to have thereby committed an offence.

## CHAPTER X.

### PUBLIC NUISANCES.

133. Whenever a District Magistrate, a Sub-divisional Magistrate or when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or



that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

*Explanation.*—A “public place” includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order. 134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135. The person against whom such order is made shall—

Person to whom order is addressed to obey. (a) perform, within the time specified in the order, the act directed thereby; or

(b) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

or show cause or claim jury.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

Procedure where he appears to show cause. 137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury. 138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(c) fix a time within which they are to return their verdict.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Procedure on order being made absolute. 140. When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequences of disobedience to order. If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

Procedure on failure to appoint jury or omission to return verdict. 141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry. 142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or

has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

## CHAPTER XI.

### TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex-parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

## CHAPTER XII.

### DISPUTES AS TO IMMOVEABLE PROPERTY.

145. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries

Procedure where dispute  
ing land, &c., is  
a breach of  
the Indian Pe

thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be.

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Order as to costs.

## CHAPTER XIII.

### PREVENTIVE ACTION OF THE POLICE.

149. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

Police to prevent cognizable offences.

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

151. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

152. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Prevention of injury to public property.

153. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

## PART V.

Information to the Police and their powers to Investigate.

### CHAPTER XIV.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him

Information in cognizable cases.

or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

155. When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Information in non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable cases.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender :

Procedure where cognizable offence suspected.

Provided as follows :—

(a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot :

Where local investigation dispensed with.

(b) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Where Police-officer in charge sees no sufficient ground for investigation.

In each of the cases mentioned in clauses (a) and (b), the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

**158.** Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

**159.** Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

**160.** Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station, who from the information given or otherwise, appears to be acquainted with the circumstances of the case ; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

**161.** Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Examination of witnesses by Police.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

**162.** No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or shall be used as evidence against the accused.

Statements to police not to be signed or admitted in evidence.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

**163.** No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

**164.** Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Power to record statements and confessions.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the

circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

“I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

“(Signed) A. B.,

“Magistrate.”

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched, and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

166. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

When officer in charge of Police-station may require another to issue search-warrant,

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit

Procedure when investigation cannot be completed in twenty-four hours.



to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation  
by subordinate Police-  
officer.

168. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany a Police-officer. 171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer,

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170. the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation.\*

\* Act X. of 1896.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide, &c.

174. Every officer in charge of a Police-station, on receiving information that a person—

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination unless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

175. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrates's Court.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

## PART VI.

### Proceedings in Prosecutions.

#### CHAPTER XV.

#### OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

##### *A.—Place of Inquiry or Trial.*

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Divisions.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

##### *Illustrations.*

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the

local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Place of trial where act is offence by reason of relation to other offence.

act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may

be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

#### *Illustrations.*

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

181. The offence of being a thug, of being a thug and committing

Being a thug or belonging to a gang of decoits, escape from custody, &c.

murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is,

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received

The offence of stealing anything may be inquired into or tried by a

Stealing.

Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief

or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain,

or not in one district only;

or where offence is continuing,

or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not : Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

185. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

When there are more Magistrates that one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Provided that no charge as to any such offence shall be inquired into

Political Agent to certify fitness of inquiry into charge.

in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in

his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

189. Whenever any such offence as is referred to in section 188 is

Power to direct copies of depositions and exhibits to be received in evidence.

being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions

made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

190. In sections 188 and 189 the expression "Political Agent" defined. "Political Agent" means and includes—

(a) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(b) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent, under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

### *B.—Conditions requisite for Initiation of Proceedings.*

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any

Cognizance of offences by Magistrates.

other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (a) or clause (b) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (c) of offences for which he may try or commit for trial.

When a Magistrate takes cognizance of an offence under clause (c), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Transfer of cases by Magistrates.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cognizance of offences by Courts of Session.

Cases to be tried by Additional and Joint Sessions Judges;

by Assistant Sessions Judges.

Cognizance of offences by High Court.

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for contempt of lawful authority of public servants.

(b) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.



(c) of any offence described in section 463, or punishable under section 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493, to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

## CHAPTER XVI.

### OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate :

Provided as follows—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 :

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing :

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This section applies to the Police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding.

## CHAPTER XVII.

### OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which, according to the fourth column of the second schedule a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which according to that column a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

## CHAPTER XVIII.

### OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complaint (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

212. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 211.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

**214.** If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

**215.** A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

**216.** When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed :

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly :

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

**217.** Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

**218.** When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge ;

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, &c., to be forwarded to High Court or Court of Session.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Custody of accused pending trial.

warrant, to custody.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by

## CHAPTER XIX.

### OF THE CHARGE.

#### *Form of Charges.*

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Language of charge.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such

Previous conviction when to be set out.

statement is omitted, the Court may add it at any time before sentence is passed.

*Illustrations.*

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time,  
place and person.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

*Illustrations.*

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

**225.** No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Effect of errors.

*Illustrations.*

(a) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d) A is charged with murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

**226.** When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment without charge or with imperfect charge.

**227.** Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Court may alter charge.

Every such alteration shall be read and explained to the accused.

**228.** If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When trial may proceed immediately after alteration.



**229.** If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

When new trial may be directed, or trial suspended.

**230.** If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

**231.** Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined.

Recall of witnesses when charge altered.

**232.** If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Effect of material error.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

*Illustration.*

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

*Joinder of Charges.*

**233.** For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Separate charges for distinct offences.

*Illustration.*

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

**234.** When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Three offences of same kind within year may be charged together.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

I.—Trial for more than one offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

II.—Offence falling within two definitions.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

III.—Acts constituting one offence, but constituting when combined a different offence.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

•  
*Illustrations.*

to paragraph I—

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under section 225 and 233 of the Indian Penal Code.

(b) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

[d] A has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

[e] With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

[f] A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(g) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code.

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to paragraph II—

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under section 471 (read with 466) and 196 of the same Code. •

to paragraphs III—

(m) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

**236.** If a single act or series of acts is of such a nature that it is

Where it is doubtful doubtful which of several offences the facts which  
what offence has been can be proved will constitute, the accused may be  
committed. charged with having committed all or any of such  
offences, and any number of such charges may be tried at once; or he may  
be charged in the alternative with having committed some one of the said  
offences.

*Illustration.*

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

**237.** If, in the case mentioned in section 236, the accused is charged

When a person is charged with one offence, and it appears in evidence that  
ed with one offence, he can he committed a different offence for which he might  
be convicted of another. have been charged under the provisions of that  
section, he may be convicted of the offence which he is shown to have  
committed, although he was not charged with it.

*Illustration.*

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

**238.** When a person is charged with an offence consisting of several

When offence proved particulars, a combination of some only of which  
included in offence constitutes a complete minor offence, and such  
charged. combination is proved but the remaining particu-  
lars are not proved, he may be convicted of the minor offence, though he  
was not charged with it.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

*Illustrations.*

(a) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

*Illustrations.*

(a) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(b) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(c) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

## CHAPTER XX.

### OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

**242.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

**243.** If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

**244.** If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

**245.** If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

**246.** A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

**247.** If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

**248.** If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

**249.** In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing

any judgment either of acquittal or conviction, and may thereupon release the accused.

250. *Repealed by Act IV. of 1891.*

## CHAPTER XXI.

### OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

253. If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

**256.** If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence, and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

If the accused puts in any written statement, the Magistrate shall file it with the record.

**257.** If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

**258.** If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

**259.** When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

## CHAPTER XXII.

### OF SUMMARY TRIALS. .

**260.** Notwithstanding anything contained in this Code,

- Power to try summarily.**
- (1) the District Magistrate,
  - (2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and
  - (3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—
    - (a) Offences not punishable with death, transportation or imprisonment for a term exceeding six months;
    - (b) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

- (c) Hurt, under section 323 of the same Code ;
- (d) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;
- (e) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;
- (f) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees ;
- (g) Mischief, under section 427 of the same Code ;
- (h) House-trespass, under section 448 of the same Code ;
- (i) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;
- (j) Abetment of any of the foregoing offences ;
- (k) An attempt to commit any of the foregoing offences, when such attempt is an offence :

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

261. The Local Government may confer on any Bench of Magistrates Power to invest Bench of Magistrates invested with less power. invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

- (a) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447 ;
- (b) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month :
- (c) Abetment of any of the foregoing offences :
- (d) An attempt to commit any of the foregoing offences, when such attempt is an offence.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge ; but he or they shall enter in such form as the Local Government may direct the following particulars :—

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complainant ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e) or clause (f) of section 260 the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;



(h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(i) the sentence or other final order; and

(j) the date on which the proceedings terminated.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

## CHAPTER XXIII.

### OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

#### A.—Preliminary.

266. In this chapter, except in section 276\* and 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjab, and such other Courts as the Governor General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Trials before High Court to be by jury. 267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors. 268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

269. The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any District, and may revoke or alter such order.

\* Act X. of 1886.

When the accused is charged in the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.\*

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

### *B.—Commencement of Proceedings.*

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

Effect of entry. . . Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

### *C.—Choosing a Jury.*

Number of jury.

274. In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district, or to any particular class of offences in that district, may direct.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jury for trial of persons not Europeans or Americans before Court of Session.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct.

Jurors to be chosen by lot.

Proviso.

Provided that—

Existing practice maintained.

shall be followed ;

*first*, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors

Persons not summoned when eligible.

persons as may be present ; and

*secondly*, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other

Trials before special jurors.

*thirdly*, in the Presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs, the jurors shall be chosen from the special jury list hereinafter prescribed.

Names of jurors to be called.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated :

Objection to jurors.

Provided that, in

Objection grounds stated.

without

the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

Grounds of objection.

(a) some presumed or actual partiality in the juror ;

(b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;

(c) his having by habit or religious vows relinquished all care of worldly affairs ;

(d) his holding any office in or under the Court ;

(e) his executing any duties of police or being entrusted with police-duties ;

(f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;

(g) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted ;

(h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Decision of objection.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276 ; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury. 280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors. 281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner. 283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

#### *D.—Choosing Assessors.*

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessors how chosen. 285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

#### *E.—Trial to Close of Cases for Prosecution and Defence.*

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

**Examination of witnesses.**

The prosecutor shall then examine his witnesses.

**Examination of accused before Magistrate to be evidence.**

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

**Evidence given at preliminary inquiry admissible.**

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, or not guilty.

If the accused or any one of several accused says that he means to adduce evidence and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution.

**Defence.**

He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections

**Right of accused as to examination and summoning of witnesses.**

211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

**Prosecutor's right of reply.**

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be

**View by jury or assessors.**

conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

When juror or assessor may be examined.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

Locking up jury.

#### *F.—Conclusion of Trial in Cases tried by Jury.*

297. In cases tried by jury, when the case for the defence, and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Charge to jury.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(a) to decide all questions of law arising in the course of the trial, and specially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

#### *Illustrations.*

(a) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(a) to decide which view of the facts is true, and then to return the verdict which under such view ought according to the direction of the Judge, to be returned;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

*Illustrations.*

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Verdict to be given on each charge.  
Judge may question jury.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Amending verdict.

305. When in a case tried before a High Court the jury are unanimous Verdict in High Court in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases. If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

306. When in a case tried before the Court of Session the Judge Verdict in Court of Ses- does not think it necessary to express disagreement sion when to prevail. with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

307. If in any such case the Sessions Judge disagrees with the Procedure where Ses- verdict of the jurors, or of a majority of the jurors, sions Judge disagrees, with on all or any of the charges on which the accused verdict, has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

#### *G.—Re-trial of Accused after Discharge of Jury.*

308. Whenever the jury is discharged, the accused shall be detained Re-trial of accused after in custody or on bail (as the case may be), and discharge of jury. shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

#### *H.—Conclusion of Trial in Cases tried with Assessors.*

309. When, in a case tried with the aid of assessors, the case for the Delivery of opinions of Defence and the prosecutor's reply (if any) are assessors, concluded, the Court may sum up the evidence



for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

**Judgment.** The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

*I.—Procedure in Case of Previous Conviction.*

**310.** In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction, for any offence, the procedure laid down in sections 271, 286, 305, 306 and 309 shall be modified as follows :—

(a) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(b) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted, as alleged in the charge.

(c) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

\*Notwithstanding anything in this section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

**311.†** Repealed by Act XII of 1891.

**312.** The names of not more than four hundred persons shall at any one time be entered in the special jurors' list.

**113.** The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(a) a list of all persons liable to serve as common jurors; and

(b) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

\* Act III of 1891.

† Act XII of 1891.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government, from serving as a juror.

Discretion of officer preparing lists.

shall be no appeal from, or review of, his decision.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of lists, preliminary and revised.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there

Revised lists of persons liable to serve as common jurors, and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the 1st day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each Sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

Number of jurors to be summoned in presidency-town.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such Sessions.

Supplementary summons.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Summoning jurors outside the Presidency-towns.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks useful, after communication with the commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the District in which they reside.

Liability to serve as jurors or assessors.

320. The following persons are exempt from liability to serve as jurors or assessors, namely :—

Exemptions.

- (a) Officers in civil employ superior in rank to a District Magistrate ;
- (b) Judges ;
- (c) Commissioners and Collectors of Revenue or Customs ;
- (d) Persons engaged in the Preventive Service in the Customs Department ;
- (e) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;
- (f) Persons actually officiating as priests or ministers of their respective religions ;
- (g) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;
- (h) Surgeons and others who openly and constantly practise the medical profession ;
- (i) Persons employed in the Post-office and Telegraph Departments ;
- (j) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641 ;
- (k) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (h), both inclusive.

List of jurors and assessors.

The list shall contain the name, place of abode and quality or business of every such person ; and if the person is an European or an American, the list shall mention the race to which he belongs.

**322.** Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

**323.** To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

**324.** For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

**325.** The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

**326.** The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

**327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

**328.** Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and service of summons.

**329.** Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

Court may excuse attendance of juror or assessor.

**330.** The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

List of jurors and assessors attending.

**331.** At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

**332.** Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

#### *L.—Special Provisions for High Courts.*

**333.** At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Power of Advocate-General to stay prosecution.

**334.** For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Time of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local Official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

## CHAPTER XXIV.

### GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and, examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the

committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

**EXPLANATION.**—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table :—

OFFENCE.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person ...	298	The person whose religious feelings are intended to be wounded.
Causing hurt ... ..	323,334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person ...	341,342	The person restrained or confined.
Assault or use of criminal force ... ..	352,355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ... ..	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person ... ..	246,427	The person to whom the loss or damage is caused.
Criminal trespass ... ..	497	The person in possession of the property trespassed upon.
House-trespass ... ..	448	
Criminal Breach of Contract of service ... ..	490,491, 492	The person with whom the offender has contracted.
Adultery ... ..	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman ... ..	498	
Defamation ... ..	500	The person defamed.
Printing or engraving matter knowing it to be defamatory ... ..	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter ... ..	502	
Insult intended to provoke a breach of the peace	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years ...	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335,



section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

348. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 & 33.

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(a) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(b) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

351. Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court, can take cognizance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

## CHAPTER XXV.

### OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII, and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

**354.** In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of recording evidence outside Presidency-towns.

**355.** In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (b) to (k), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons-cases, and in trials of certain offences by first and second class magistrates.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

**356.** In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Record in other cases outside Presidency-towns.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Evidence given in English.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

**357.** The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

Language of record of evidence.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Option to Magistrate in cases under section 355.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

361. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

Interpretation of evidence to accused or his pleader.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Record of evidence in Presidency Magistrates' Courts.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjab, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263. f

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Panjab may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

## CHAPTER XXVI.

### OF THE JUDGMENT.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in

custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

367. Every such judgment shall, except as otherwise expressly provided

by this Code, be written by the presiding officer of the

Language of judgment. Court in the language of the Court, or in English ;

Contents of judgment. and shall contain the point or points for determination, the decision thereon, and the reasons for the

decision ; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

When the conviction is under the Indian Penal Code, and it is doubtful

Judgment in alternative. under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty. .

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed :

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Sentence of death.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. .

Sentence of transportation.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

369. No Court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error.

Court not to alter judgment.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars :—

(a) the serial number of the case ;

(b) the date of the commission of the offence ;

(c) the name of the complainant (if any) ;

(d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence ;

(e) the offence complained of or proved ;

(f) the plea of the accused and his examination (if any) ;

(g) the final order ;

(h) the date of such order ; and

(i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

**371.** The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, Judgment to be explained and copy given to accused. a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, Case of person sentenced to death. if he wishes to appeal, his appeal should be preferred.

**372.** The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record. Judgment when to be translated.

Court of Session to send copy of finding and sentence to District Magistrate.

**373.** In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

## CHAPTER XXVII.

### OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

**374.** When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. Sentence of death to be submitted by Court of Session.

**375.** If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session. Power to direct further inquiry to be made or additional evidence to be taken.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

**376.** In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(a) may confirm the sentence, or pass any other sentence which the lower Court might have passed ; or

(b) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge ; or

(c) may acquit the accused ; or

(d) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made, or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken ; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.



## CHAPTER XXVIII.

## OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

**Execution of order passed under section 376.** 382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

**Postponement of capital sentence on pregnant woman.** 383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

**Execution of sentences of transportation or imprisonment in other cases.** 384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

**Direction of warrant for execution.** 385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

**Warrant with whom to be lodged.** 386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

**Warrant for levy of fine.** 387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

**Effect of such warrant.** 388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

**Suspension of execution of sentence of imprisonment.** 389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

**Who may issue warrant.**

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light rattan.

In no case shall such punishment exceed thirty stripes.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

(a) females;

(b) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say :—

Execution of sentences  
on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment ;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement ; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced :

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Saving as to sections  
396 and 397.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of the payment of the fine until the person has undergone the further sentence or sentences.\*

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Confinement of youthful offenders in reformatories.

Return of warrant on execution of sentence.

## CHAPTER XXIX.

### OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had, or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled, the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence.\*

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

\* Act X, of 1886.

**402.** The Governor General in Council, or the Local Government, may, without the consent of the person sentenced commute any one of the following sentences for any other mentioned after it :—

Power to commute punishment.

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

## CHAPTER XXX.

### OF PREVIOUS ACQUITTALS OR CONVICTIONS.

**403.** A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

Person once convicted or acquitted not to be tried of same offence.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

*Explanation.*—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

#### *Illustrations.*

(a) A is tried upon charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery ; but it appears from the facts that A committed robbery at the time when the murder was committed ; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

## PART VII.

### Of Appeal, Reference and Revision.

#### CHAPTER XXXI.

##### OF APPEALS.

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

(a) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court

of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session ;

(b) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session.

Appeals to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an additional or Joint Sessions Judge.

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held by a Sessions Judge, or an additional or a Joint Sessions Judge, may appeal to the High Court.

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

*Explanation.*—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

*Explanation.*—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Appeal on behalf of Government in case of acquittal.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Appeal on what matters  
admissible.

*Explanation.*—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Petition of appeal.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Procedure when appel-  
lant in jail.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Summary rejection of  
appeal.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

Notice of appeal.

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

Powers of Appellate  
Court in disposing of ap-  
peal.

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retired or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retired by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without



such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same ;

(c) in an appeal from any other order, alter or reverse such order :

(d) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

**424.** The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Judgments of subordinate Appellate Courts.

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

**425.** Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

**426.** Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and, if he is in confinement, that he be released on bail or on his own bond.

Suspension of sentence pending appeal. Release of appellant on bail.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

**427.** When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Arrest of accused in appeal from acquittal.

**428.** In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall for the purposes of Chapter XXV be deemed to be an inquiry.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure where Judges of Court of appeal are equally divided.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

Abatement of appeals.

## CHAPTER XXXII.

### OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Reference by Presidency Magistrate to High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case according to decision of High Court.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Power to reserve questions arising in original jurisdiction of High Court.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit,

be admitted to bail,

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

435. The High Court or any Court of Session, or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under section 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged ;

Provided as follows—

(a) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made ;

(b) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427, and

428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of revision are equally divided in opinion the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding or acquittal into one of conviction.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision : Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue ; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision, or order is so certified shall thereupon make such orders as are conformable to the decision so certified ; and, if necessary, the record shall be amended in accordance therewith.

## PART VIII.

### Special Proceedings.

#### CHAPTER XXXIII.

##### CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Magistrates who may inquire into and try charges against European British subjects.

**444. No Judge presiding in a Court of Session except the Sessions Judge shall exercise jurisdiction over an European**

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years and to be specially empowered.

British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

**445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person :**

Cognizance of offence committed by European British subject.

Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence

if committed by another person :

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

**446. Notwithstanding anything contained in section 32 or section 34,**

Sentences which may be passed by Provincial Magistrates.

no Magistrate other than a District Magistrate or Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both; and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand Rupees, or both.\*

**447. When an European British subject is accused of an offence before**

When commitment is to be to Court of Session and when to High Court.

a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

**448. Where any person committed to the High Court under section**

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

**449. Notwithstanding anything contained in section 31, no Court of**

Sentences which may be passed by Court of Session.

Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

450. Repealed by Act III of 1884.

"451. (1) In trials of European British subjects before a High Court, or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

(2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans."\*

451A. (1) In trials of European British subjects before a District Magistrate, any such subject may, in summons case before he is heard in his defence under section 244, or in a warrant case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

"(2) If a claim is made under sub-section (1) in a summons case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

"(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

"(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

"(5) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

"(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

"(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

"(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447."

"451B. (1) If an accused person claims to be tried by jury under section 451A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

"(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451A."

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately :

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial ; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. If an European British subject does not claim to be dealt with Failure to 'plead status as such by the Magistrate before whom he is tried a waiver. or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person who is not an European British subject is dealt Trial under this chapter with as such under this chapter, and does not of person not an European object, the inquiry, commitment, trial or sentence British subject. (as the case may be) shall not, by reason of such dealing, be invalid.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject Right of European 'Bri- or any person on his behalf may apply to the High tish subject unlawfully de- Court which would have jurisdiction over such tained to apply for order to be brought before High European British subject in respect of any offence Court. committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

457. The High Court, if it thinks fit, may, before issuing such order, Procedure on such inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

458. The High Court may issue such orders throughout the territo- Territories throughout ries within the local limits of its appellate criminal which High Court may jurisdiction, and such other territories as the Gov- issue such orders. ernor General in Council may direct.

459. Unless there is something repugnant in the context, all enact- Application of Acts con- ments heretofore or hereafter made by the Governor ferring jurisdiction on General in Council, which confer on Magistrates or on the Court of Session jurisdiction over Session. offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session\* not being a Justice of the Peace.



460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury for trial of Europeans or Americans. 461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, or before the Court of a District Magistrate or Sessions Judge presiding under section 451A or 451B, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

Summoning and empanelling jurors under section 451 or 460. The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section, 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained :

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

Conduct of criminal proceedings against European British subjects, &c.

## CHAPTER XXXIV.

### LUNATICS.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

Procedure in case of accused being lunatic.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was

wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

**470.** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

**471.** Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

**472.** When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

**473.** If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

**474.** If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks

**475.** Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

Power of Governor General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another.

safe custody in British

**475A.** The Governor General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of

Power of Local Government to relieve Inspector General of certain functions.

of the Inspector General of Prisons under section 372, section 473 or section 474.\*

**475B.** The Local Government may empower the officer in charge of the jail in which a person is confined under the provision of section 466 or section 471 to discharge all or any of the functions of the Inspector General of Prisons under section 372, section 473 or section 474.\*

## CHAPTER XXXV.

### PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

**476.** When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class,\* and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

**477.** Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

**478.** When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry, shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

**479.** When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

**480.** When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

**481.** In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**482. If the Court in any case considers that a person accused of any**

Procedure where Court considers that case should not be dealt with under section 480.

of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

**483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.**

**484. When any Court has under section 480 adjudged an offender to**

Discharge of offender on submission or apology.

punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

**485. If any witness before a Criminal Court refuses to answer such**

Imprisonment or commitment of person refusing to answer or produce document.

questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

**486. Any person sentenced by any Court under section 480 or section**

Appeals from convictions in contempt-cases.

485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI. shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

487. Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

## CHAPTER XXXVI.

### OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

489. On proof of a change in the circumstances of any person receiving  
 Alteration in allowance. under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

490. A copy of the order of maintenance shall be given without pay-  
 Enforcement of order of maintenance. ment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

## CHAPTER XXXVII.

### DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*. 491. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(a) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.



Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

## PART IX.

### Supplementary Provisions.

#### CHAPTER XXXVIII.

##### OF THE PUBLIC PROSECUTOR.

**492.** The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor, has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

**493.** The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

**494.** Any Public Prosecutor appointed by the Governor General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

**495.** Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council\*; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.\*

## CHAPTER XXXIX.

### OF BAIL.

**496.** When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

**497.** When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

**498.** The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

**499.** Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall

\* Act X. of 1886.

attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court, as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

## CHAPTER XL.

### OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

504. If the witness is within the local limits of the jurisdiction of any Commission in case of Presidency Magistrate, the Magistrate or Court witness being within Presidency-town. issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any Parties may examine witness. interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by plea-der, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose Power of Provincial Subordinate Magistrate to apply for issue of commission. evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission. Adjournment of inquiry or trial.

## CHAPTER XLI.

## SPECIAL RULES OF EVIDENCE.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

510. Any document purporting to be a report under the hand of any\* Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

Previous conviction or acquittal how proved.

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order ; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered ;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Record of evidence in absence of accused.

## CHAPTER XLII.

## PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money

Deposit instead of recognizance.

or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or chief Presidency Magistrate\* within the local limits of whose jurisdiction such property is found.\*

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeals from, and revision of, orders under section 514.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

## CHAPTER XLIII.

### OF THE DISPOSAL OF PROPERTY.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit, for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

*Explanation.*—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

518. In lieu of itself passing an order under section 517, the Court

<p>Order may take form of reference to District or Sub-divisional Magistrate.</p>	may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the Police and the seizure has been reported to him in the manner hereinafter mentioned.
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519. When any person is convicted of any offence which includes, or

<p>Payment to innocent purchaser of money found on accused.</p>	amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.
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520. Any Court of appeal, confirmation, reference or revision may

<p>Stay of order under section 517, 518 or 519.</p>	direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter or annul such order.
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521. On a conviction under the Indian Penal Code, section 292, section

<p>Destruction of libellous and other matter.</p>	293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.
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The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

522. Whenever a person is convicted of an offence attended by criminal

<p>Power to restore possession of immoveable property.</p>	force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.
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No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

**523. The seizure by any Police-officer of property taken under section**

Procedure by Police  
upon seizure of property  
taken under section 51 or  
stolen.

51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if

Procedure where owner  
of property seized un-  
known.

any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

**524. If no person within such period establishes his claim to such**

Procedure where no  
claimant appears within  
six months.

property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

**525. If the person entitled to the possession of such property is un-**

Power to sell perishable  
property.

known or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

## CHAPTER XLIV.

### OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer  
case, or itself try it.

**526. Whenever it is made to appear to the High Court—**

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses,



\*(e) that such an order is expedient for the ends of justice, it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ; or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

(4) that an accused person be committed for trial to itself or to a Court of Session.\*

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

526A. If in any criminal case or appeal, before the commencement of the hearing, the public prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.\*

527. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same. A Magistrate making an order under this section shall record in writing his reason for making the same.\*

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

## CHAPTER XLV.

### OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings. 529. If any Magistrate not empowered by law to do any of the following things, namely:—

- (a) to issue a search-warrant, under section 98 ;
  - (b) to order, under section 155, the Police to investigate an offence ;
  - (c) to hold an inquest under section 176 ;
  - (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
  - (e) to take cognizance of an offence under section 191, clause (a) or clause (b) ;
  - (f) to transfer a case under section 192 ;
  - (g) to tender a pardon under section 337 or section 338 ;
  - (h) to sell property under section 524 or section 525 ; or
  - (i) to withdraw a case and try it himself under section 528 ;
- erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings. 530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely) :—

- (a) attaches and sells property under section 88 ;
- (b) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ;
- (e) discharges a person lawfully bound to be of good behaviour ;
- (f) cancels a bond to keep the peace ;
- (g) makes an order, under section 133, as to a local nuisance ;
- (h) prohibits, under section 143, the repetition or continuance of a public nuisance ;

\* Act III of 1884.

- (i) issues an order under section 144 ;
  - (j) makes an order under Chapter XII ;
  - (k) takes cognizance, under section 191, clause (c), of an offence ;
  - (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
  - (m) calls, under section 435, for proceedings ;
  - (n) makes an order for maintenance ;
  - (o) revises under section 515, an order passed under section 514 ;
  - (p) tries an offender ;
  - (q) tries an offender summarily ; or
  - (r) decides an appeal ;
- his proceedings shall be void.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong place.

Sessions, Division, District, Sub-division or other local area, unless it appears that such error occasioned a failure of justice.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

533. If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded ; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal

or revision on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

538. No distress

made under this Code shall be deemed unlawful nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

## CHAPTER XLVI.

### MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or

Courts and persons before whom affidavits may be sworn.

any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

540. Any Court may, at any stage of any inquiry, trial or other pro-

ceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

**541.** Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail.

that the person be removed to a criminal jail.

**(2)** When a person is removed to a criminal jail under sub-section (1), and their return to the civil jail. he shall, on being released therefrom, be sent back to the civil jail, unless either—

**(a)** three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure ; or

**(b)** the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.\*

**542.** Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

**543.** When the service of an interpreter are required by any Criminal Court for the interpretation of any evidence to interpret truthfully. or statement, he shall be bound to state the true interpretation of such evidence or statement.

**544.** Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

**545.** Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

Power of Court to pay expenses or compensation out of fine.

**(a)** in defraying expenses properly incurred in the prosecution ;

**(b)** in compensation for the inquiry caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Payments to be taken into account in subsequent suit.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of proceedings.

549. The Governor General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Apprehension of such persons.

550. Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

552. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid

Compensation to person groundlessly given in charge in Presidency-town.

by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

553. With the previous sanction of the Governor-General in Council the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(c) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

*Explanation.*—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

557. All powers conferred by this Code on the Governor General in Council or on the Local Government may be exercised, from time to time as occasion requires.

558. *Repealed by Act XII. of 1891.*

Officers concerned in sales not to purchase or bid for property.

559. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.\*

†560. (1) If in any case instituted by complaint as defined in this Code, or upon information given to a Police-Officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is tried discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit :

Provided that, before making any such direction, the Magistrate shall—

(a) Record and consider any objection which the complainant or informant may urge against the making of the direction, and,

(b) If the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(2) Compensation of which a Magistrate has ordered payment under sub-section (1) shall be recoverable as if it were a fine :

Provided that, if it can not be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(3) A complainant or informant who has been ordered under sub-section (1) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section".

‡561. (1) Notwithstanding any thing in this Code, on Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

"(2) And, notwithstanding any thing in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a Police-Officer with respect to such an offence as is referred to in sub-section (1) of this section, no Police-Officer of a rank below that of a Police Inspector shall be employed either to make, or to take part in, the investigation."

3. In Schedule II to the said Code, for the entry respecting section 376 of Indian Penal Code the following shall be substituted, namely:—

\* Act X of 1886.

† Act XII of 1891.

‡ Act IV of 1891.



Column 1.	Column 2.	Column 3.	Column 4	Column 5.	Column 6.	Column 7.	Column 8.
	Rape—If the sexual intercourse was by a man with his own wife.	Shall not arrest without warrant.	Summons	Bailable..	Not compoundable	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
	In any other case.	May arrest without warrant.	Warrant	Not bailable.	Ditto ...	Ditto ...	Ditto.

SCHEDULE I.  
ENACTMENTS REPEALED.  
(a).—*Statute.*

Year, reign and chapter.	Title.	Extent of repeal.
13 Geo. III, chapter 63 ...	An act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(b).—*Acts of the Governor General in Council.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process ...	So much as has not been repealed.
XLV of 1860 ...	Penal Code ...	The illustrations to section 214.
V of 1861 ...	Police Act ...	Section 6 and the last nine words of section 24.
XXVIII of 1862 ...	Criminal Procedure, Supreme Courts.	Section 35, down to and including the words " Provided that."
VI of 1864 ...	Whipping ...	So much as has not been repealed.
II of 1869 ...	Justices of the Peace ...	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Punjab Laws ...	So far as it relates to Bengal Regulation XX of 1825.
X of 1872 ...	The Code of Criminal Procedure	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV of 1874 ...	Laws Local Extent ...	So far as it relates to Bengal Regulation XX of 1825.
X of 1875 ...	High Court's Criminal Procedure	The whole Act, except section 144 and so much of section 146 as relates to informations.
XX of 1875 ...	Central Provinces Laws ...	So far as it relates to Bengal Regulation XX of 1825.
XXVIII of 1876 ...	Oudh Laws ...	Ditto ditto.
IV of 1877 ...	Presidency Magistrates ...	The whole Act, except section 57.
XXI of 1879 ...	Extradition ...	Chapter III.
X of 1881 ...	Coroners ...	Sections 8 and 9.

(c).—*Regulations.*

Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial...	So much as has not been repealed.
III of 1872 ...	Santhal Perganas Settlement ...	So far as it relates to Act X of 1872.
IX of 1874 ...	Araikan Hills District Laws ...	So far as it relates to Acts II of 1869, X of 1872 and XI of 1874.
III of 1877 ...	Ajmere Laws ...	So far as it relates to Bengal Regulation XX of 1825.

(d).—*Acts of the Governor of Fort St. George in Council.*

VIII of 1867 ...	Police ...	Section 9.
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## SCHEDULE II.

### TABULAR STATEMENT OF OFFENCES.

**EXPLANATORY NOTE.**—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

### CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
111	Abetment of any offence, when one act is abetted and a different act is done ; subject to the proviso.	Ditto	Ditto	Ditto	Ditto	The same punishment as for the offence intended to be abetted.	Ditto.

## SCHEDULE II.—(Continued.)

## CHAPTER V.—ABETMENT—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether offence is bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise. Ditto	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment. If an act which causes harm be done in consequence of the abetment.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	Ditto	According as the offence abetted is bailable or not.	Ditto	Imprisonment of either description for 14 years and fine. Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

117	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	...	Ditto	...	Not bailable	...	...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	...	...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation for life.	Ditto	...	Ditto	...	Not bailable	...	...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed.	Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	...	...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	...	Ditto	...	Ditto	...	...	Ditto	Ditto.
	If the offence be not committed.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

## SCHEDULE II.—(Continued.)

## CHAPTER VI.—OFFENCES AGAINST THE STATE.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
121	Waging or attempting to wage war, or abetting the waging war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Ditto	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Ditto	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.

125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto	...	Ditto	...	Ditto	...	Transportation for life and fine, or imprisonment for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto	...	Ditto	...	Bailable	...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	...	Ditto	...	Not bailable	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant	...	Not bailable	...	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto	Ditto	...	Ditto	...	Ditto	Death, or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

## SCHEDULE II.—(Continued.)

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate
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## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	...	Summons	...	Bailable	...	Not compoundable.	...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
147	Rioting	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrested may be made without warrant for the offence or not.	...	According as a warrant or summons may issue for the offence.	...	According as the offence is bailable or not.	...	Ditto	...	The same as for the offence.	The Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	...	According to the offence committed by the person hired, engaged or employed.	...	Ditto	...	Ditto	...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse	Ditto	...	Summons	...	Bailable	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.



SCHEDULE II.—(Continued.)  
CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILITY.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
152	Assaulting or obstructing public servant when suppressing riot, &c.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed. If not committed ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Presidency Magistrate or Magistrate of the first or second class.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine ...	Ditto.

157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto	...	Ditto	...	...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto	...	Ditto	...	...	Ditto	Ditto.
	Or to go armed	Ditto	Warrant	...	Ditto	...	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons	...	Ditto	...	...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

## CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons	...	Exalable	...	Not compoundable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order to influence a public servant, by corrupt or illegal means.	Ditto	Ditto	...	Ditto	...	Ditto	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II.—(Continued.)

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

## CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

	Abducting to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons	Bailable	...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
172	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chap. XXXV; or if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	Ditto	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

SCHEDULE II.—(Continued.)

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—(Continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether -compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information. If the notice or information required respects the commission of an offence, &c.	Shall not arrest without warrant. Ditto	Summons ... Ditto	Bailable ... Ditto	Not compoundable. Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class. Ditto.
177	Knowingly furnishing false information to a public servant, if the information required respects the commission of an offence, &c.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Ditto	Ditto.
178	Refusing oath when duly required to take oath by a public servant.	Ditto	Ditto	Ditto	Ditto	Imprisonment for two years, or fine, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chap. XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.

179	Being legally bound to state truth, and refusing to answer questions.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto.	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto.	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.

## SCHEDULE II.—(Continued.)

## CHAPTER X.—CONTENTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
187	Omission to assist public servant when bound by law to give such assistance.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	Willfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed. If such disobedience causes danger to human life, health or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
		Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.	
CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.										
193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	...	Warrant	...	Bailable	...	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto	...	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	...	Ditto	...	Not bailable	...	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto	...	Ditto	...	Ditto	...	Ditto	Death, or as above	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto	...	Ditto	...	Ditto	...	Ditto	The same as for the offence.	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	...	Ditto	...	According as the offence of giving such evidence is bailable or not.	...	Ditto	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	...	Ditto	...	Bailable	...	Ditto	The same as for giving false evidence.	Ditto.



CHAPTER XI.—FALS<sup>E</sup>. EVIDENCE AND OFFENCE AGAINST PUBLIC JUSTICE.—(Continued.)

SCHEDULE II.—(Continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
198	Using as a true certificate one known to be false in a material point.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	The same as for giving false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

202	If punishable with less than 10 years imprisonment.	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
203	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	...	Summons	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
204	Giving false information respecting an offence committed.	Ditto	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
205	Secreting or destroying any document to prevent its production as evidence.	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
206	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
207	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
208	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.

SCHEDULE II.—(Continued.)  
CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	*Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
211A*	If offence charged be punishable with imprisonment for seven years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
	If punishable with imprisonment for one year and not for 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

\* Act X. of 1886.

SCHEDULE II.—(Continued.)  
CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant	Bailable	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, with or without fine.	Ditto.
	If with imprisonment for one year, and not for 10 years.	Ditto	Ditto	Ditto	Ditto	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.

## SCHEDULE II.—(Continued.)

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend a person under sentence of a Court of Justice, if under sentence of death. If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards. If under sentence of imprisonment for less than 10 years; or lawfully committed to custody.	Shall not arrest without warrant.  Ditto	Warrant ...  Ditto	Not bailable ...  Ditto	Not compoundable.  Ditto	Transportation for life, or imprisonment of either description for 14 years, with or without fine.  Imprisonment of either description for 7 years, with or without fine.	Court of Session.  Ditto.
223	Escape from confinement negligently suffered by a public servant.	Ditto	Summons ...	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.  Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.  Presidency Magistrate or Magistrate of the first or second class. Ditto.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody. If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, and fine.	...	Ditto	...	Ditto	...	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, and fine.	...	Ditto	...	Ditto	...	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	...	Ditto	...	Ditto	...	Ditto
225A*	If under sentence of death ... Omission to apprehend, or suzerance of escape, on part of public servant in cases not otherwise provided for— (a) in case of intentional omission or suzerance ;	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	...	Ditto	...	Ditto	...	Ditto
	(b) in case of negligent omission or suzerance.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	...	Ditto	...	Ditto	...	Court of Session, Presidency Magistrate or Magistrate of the first class.
225B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	May arrest without warrant.	...	Warrant	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both.	...	Ditto	...	Ditto	...	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	...	Ditto	...	Ditto	...	Ditto
		Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	...	Ditto	...	Ditto	...	Court of Session.

\* Act X of 1886.



## SCHEDULE II.—(Continued.)

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Not bailable ...	Not compoundable.	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chap. XXXV.
229	Personation of a juror or assessor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

## CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
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232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	...	Ditto	...	Ditto	...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeit, of the Queen's coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.



245	Unlawfully taking from a Mint any coining instrument.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	...	Ditto	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	...	Ditto	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	...	Ditto	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	...	Ditto	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	...	Ditto	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	...	Ditto	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	...	Ditto	Ditto.

## SCHEDULE II.—(Continued.)

## CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ..	Bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class.

260	Using as genuine a Government stamp known to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

## CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons	Bailable	...	Not compoundable	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto	Ditto	Ditto	...	Ditto	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto	Ditto	...	Ditto	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto	Ditto	Ditto	...	Ditto	Ditto	Ditto.

**SCHEDULE II.—(Continued.)**  
**CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.**

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation..	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	...	Ditto	...	Ditto	...	Ditto	...	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Court of Session.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury to any public way or line of navigation.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	...	Ditto	...	Ditto	...	Ditto	...	Ditto.



## SCHEDULE II.—(Continued.)

## CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.
286	So dealing with any explosive substance.	May arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.
287	So dealing with any machinery.	Shall not arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has right entitling him to pull it down or repair it.	Shall not arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.

290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Fine of 200 rupees.	...	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine, or both.	...	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto	Warrant	...	Ditto	...	Imprisonment of either description for 3 months, or fine, or both.	...	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto	Ditto	...	Ditto	...	Ditto	...	Ditto.
294	Obscene songs	Ditto	Ditto	...	Ditto	...	Ditto	...	Ditto.
294A	Keeping a lottery-office	Shall not arrest without warrant	Summons	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	...	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto	Ditto	...	Ditto	...	Fine of 1,000 rupees	...	Ditto.

## CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons	...	Ballable	...	Not compoundable.	...	Presidency Magistrate or Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto	Ditto	...	Ditto	...	Ditto	...	Ditto.
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	...	Ditto.

SCHEDULE II.—(Continued.)  
CHAPTER XV.—OFFENCES RELATING TO RELIGION.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

*Of offences affecting life.*

		May arrest without warrant.	Warrant	Not bailable ...	Not compoundable.	Death or transportation for life and fine.	Court of Session.
302	Murder ...	...	Warrant	...	...	...	...
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto	...	Ditto	Death ...	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto	...	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

		Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 10 years, or fine, or both.	Court of Session.
304A	If act is done with know- ledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 2 years, or fine, or both.	Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class.
305	Causing death by rash or negligent act.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
306	Abetment of suicide commit- ted by a child, or insane or delirious person, or an idiot, or a person, in- toxicated.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 10 years and fine.	Ditto.
307	Attempting the commission of suicide.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
308	Attempt to murder ... If such act cause hurt to any person, Attempt by life-convict to murder, if hurt is caused.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or as above.	Ditto.
309	Attempt to commit culpable homicide.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Death, or as above	Ditto.
310	Attempt to commit suicide ... If such act cause hurt to any person.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 3 years, or fine or both.	Ditto.
311	Being a thug	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 7 years, or fine, or both.	Ditto.
		Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
		Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, and fine.	Court of Session.

## SCHEDULE II.—(Continued.)

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(Continued.)

*Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants and of the Concealment of Births.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
312	Causing miscarriage ... If the woman be quick with child.	Shall not arrest without warrant. Ditto ...	Warrant ... Ditto ...	Bailable ... Ditto ...	Not compoundable. Ditto ...	Imprisonment of either description for 3 years, or fine, or both. Imprisonment of either description for 7 years and fine.	Court of Session. Ditto.
313	Causing miscarriage without woman's consent.	Ditto ..	Ditto ...	Not bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage. If act done without woman's consent.	Ditto ... Ditto ...	Ditto ... Ditto ...	Ditto ... Ditto ...	Ditto ... Ditto ...	Imprisonment of either description for 10 years and fine. Transportation for life, or as above.	Ditto. Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

*Of Hurt.*

323	Voluntarily causing hurt ...	Shall not arrest without warrant.	Summons	...	Bailable	...	Compoundable...	...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto	...	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending. Not compoundable.	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto	Ditto	...	Ditto	...	...	...	Imprisonment of either description for 7 years, and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto	Ditto	...	Not bailable	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.

SCHEDULE II.—(Continued.)  
CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(Continued.)  
*Of Hurt—(Concluded.)*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
328	Administering stupefying drug with intent to cause hurt, &c.	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto	Ditto	... Bailable	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	...	Summons	...	Bailable	...	Compoundable...	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	...	Summons	...	Bailable	...	Compoundable when permission is given by the Court before which a prosecution is pending	...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto	...	Ditto	...	Ditto	...	Not compoundable.	...	Imprisonment of either description for 8 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto	...	Ditto	...	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending.	...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years or fine of 1,000 rupees, or both.	Ditto.

*Of Wrongful Restraint and Wrongful Confinement.*

341	Wrongfully restraining any person.	Ditto	...	Ditto	...	Ditto	...	Compoundable...	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
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**SCHEDULE II.—(Continued.)**  
**CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(Continued.)**  
*Of Wrongful Restraint and Wrongful Confinement.—(Concluded.)*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
342	Wrongfully confining any person.	May arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
<i>Of Criminal Force and Assault.</i>									
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons	...	Bailable	...	Compoundable...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant	...	Ditto	...	Not compoundable	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto	...	Ditto	...	Ditto	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons	...	Ditto	...	Compoundable...	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant	...	Not bailable	...	Not compoundable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	Ditto	...	Bailable	...	Ditto	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons	...	Ditto	...	Compoundable...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

**SCHEDULE II.—(Continued.)**  
**CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(Concluded.)**  
*Of Kidnapping, Abduction, Slavery and Forced Labour.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
363	Kidnapping	...	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto	Ditto	Ditto	Ditto	Punishment for kidnapping or abduction.	Ditto.

369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto	Bailable	...	Ditto	...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto	Not bailable	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
374	Unlawful compulsory labour	Ditto	...	Bailable	...	Compoundable...	...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

*Of Rape.*

376	Rape	May arrest without warrant.	Warrant	Not bailable	...	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
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*Of Unnatural Offences.*

377	Unnatural offences	May arrest without warrant.	Warrant	Not bailable	...	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
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## SCHEDULE II.—(Continued.)

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

*Of Theft.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
379	Theft ... ..	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

*Of Extortion.*

384	Extortion	...	Shall not arrest without warrant.	Warrant	...	Bailable	...	Not compoundable.	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class. Ditto.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death of grievous hurt.	...	Ditto	Ditto	...	Not bailable	...	Ditto	...	Imprisonment of either description for 10 years and fine	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence threatened be an unnatural offence.	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Transportation for life.	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
	If the offence be an unnatural offence.	...	Ditto	Ditto	...	Ditto	...	Ditto	...	Transportation for life	Ditto.

SCHEDULE II.—(Continued.)  
CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)  
*Of Robbery and Dacoity.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
392	Robbery	...	Warrant	Not bailable ...	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
393	Attempt to commit robbery...	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 14 years and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery or any other person jointly concerned in such robbery.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 7 years and fine.	Ditto.
395	Dacoity	Ditto	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
396	Murder in dacoity	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session.
397	Robbery or dacoity, with attempt to cause death or grievous hurt,	Ditto	Ditto	Ditto	Ditto	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
						Rigorous imprisonment for not less than 7 years.	Ditto.

398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto
399	Making preparation to commit dacoity.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.

*Of Criminal Misappropriation of Property.*

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant	...	Bailable	...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.



SCHEDULE II.—(Continued.)  
CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)  
*Of Criminal Breach of Trust.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
406	Criminal breach of trust ...	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant, or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

*Of the receiving of Stolen Property.*

	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
411							
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
413	Habitually dealing in stolen property.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

*Of Cheating.*

	Cheating	Shall not arrest without warrant.	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
417							
418	Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.

SCHEDULE II.—(Continued.)  
CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)

*Of Cheating.—Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

*Of Fraudulent Deeds and Dispositions of Property.*

		Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.

424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
<i>Of Mischief.</i>									
426	Mischief	...	Shall not arrest without warrant.	Summons	...	Bailable	...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto	...	Ditto	...	Not compoundable.	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.

\* See Act XI of 1874, Section 4.

## SCHEDULE II.—(Continued.)

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)

## Of Mischief.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
431	Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto	Ditto	...	Not bailable	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.

*Of Criminal Trespass.*

447	Criminal trespass	...	Summons	...	Bailable	...	Compoundable.	Any Magistrate.
448	House-trespass	...	Warrant	...	Ditto	...	Ditto	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto	Ditto	...	Not bailable	...	Not compoundable.	Court of Session.

SCHEDULE II.—(Continued.)  
CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Continued.)  
*Of Criminal Trespass.—(Continued.)*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
451	House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft ...	Ditto ... Ditto ...	Ditto ... Ditto ...	Bailable ... Not bailable ...	Ditto ... Ditto ...	Imprisonment of either description for 2 years and fine. Imprisonment of either description for 7 years and fine.	Any Magistrate. Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
453	Lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.

454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If the offence is theft	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.



SCHEDULE II.—(Continued.)  
CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(Concluded.)  
*Of Criminal Trespass.—(Concluded.)*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	466	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
Forgery	Forgery of a record of a Court of Justice or of a Register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.

67	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c. When the valuable security is a promissory note of the Government of India.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
68	Forgery for the purpose of cheating.	May arrest without warrant.	Ditto	...	Ditto	...	Ditto	...	Ditto.
69	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose	Shall not arrest without warrant. Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
70	Using as genuine a forged document which is known to be forged.	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
71	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto	...	Not bailable	...	Ditto	...	Ditto.
72	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Ditto	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
73	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Ditto	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.

SCHEDULE II.—(Continued.)

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.—(Continued.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
475	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto.

477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
<i>Of Trade and Property-Marks.</i>									
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	...	Bailable	...	Not compoundable.	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II.—(Continued.)

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TRADE OR PROPERTY-MARKS.—(Concluded.)

*Of Trade and Property-marks.—(Continued.)*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
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SCHEDULE II.—(Continued.)  
CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.—(Concluded).

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
497	Adultery	Ditto	Ditto	Bailable	Compoundable...	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant	Bailable	Compoundable...	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.

502	Sale or printed of engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
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## CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to 'provoke a breach of the peace.	Shall not arrest without warrant.	...	...	...	...	...	Compoundable...	...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto	...	...	...	...	...	Not compoundable.	...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ... If threat be to cause death or grievous hurt, &c.	Ditto	...	...	...	...	...	Compoundable...	...	Ditto	Ditto.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto	...	...	...	...	...	Ditto	...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Court of Session, Presidency Magistrate or Magistrate of the first class.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	...	...	...	...	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto	...	...	...	...	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto	...	...	...	...	...	Ditto	...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.



SCHEDULE II.—(Concluded.)  
CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.					According to the provisions of section 29 of this Code.		
	May arrest without warrant.	Warrant	Not bailable	Not compoundable.	.....	.....	.....
If punishable with death, transportation or imprisonment for seven years or upwards.	Ditto	Ditto	Ditto	Ditto	.....	.....	.....
If punishable with imprisonment for three years and upwards but less than seven.	Ditto	Ditto	Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	.....	.....	.....	.....
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons	Bailable	Ditto	.....	.....	.....
If punishable with fine only.	Ditto	Ditto	Ditto	Ditto	.....	.....	.....

## SCHEDULE III.

## ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

*1.—Ordinary Powers of a Magistrate of the Third Class.*

*1 A.\*—Power to arrest or direct the arrest and to commit to custody a person committing an offence in his presence.*

- (1) Power to arrest, or direct the arrest in his presence of, an offender ; section 65.
- (2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant ; sections 83, 84 and 86.
- (3) Power to issue proclamations in cases judicially before him, section 87.
- (4) Power to attach and sell property in cases judicially before him, section 88.
- (5) Power to restore attached property, section 89.
- (6) Power to issue search-warrant, section 96.
- (7) Power to endorse a search-warrant and order delivery of thing found, section 99.
- (8) Power to record statements or confessions during a police investigation, section 164.
- (9) Power to authorize detention of a person during a police investigation, section 167.
- (10) Power to detain an offender found in Court, section 351.
- (11) Power to sell perishable property of a suspected character, section 525.

*II.—Ordinary Powers of a Magistrate of the Second Class.*

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

*III.—Ordinary Powers of a Magistrate of the First Class.*

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.
- (5) Power to require security for good behaviour, section 109.
- (6) Power to make orders, &c., in possession cases, sections 145, 146 and 147.
- (7) Power to commit for trial, section 206.
- (8) Power to stop proceedings when no complainant, section 249.
- (9) Power to make orders of maintenance, sections 488 and 489.

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\* Act XII of 1891.

*IV.—Ordinary Powers of a Sub-divisional Magistrate.*

- (1) The ordinary powers of a Magistrate of the first class.
- (2) Power to direct warrants to landholders, section 78.
- \*(2A) Power to require security for good behaviour, section 110.
- (3) Power to make orders as to local nuisances, section 133.
- (4) Power to make orders prohibiting repetitions of nuisances, section 143.
- (5) Power to make orders under section 144.
- (6) Power to hold inquests, section 174.
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (8) Power to entertain complaints, section 191.
- (9) Power to receive police-reports, section 191.
- (10) Power to entertain cases without complaint, section 191.
- (11) Power to transfer cases to a Subordinate Magistrate, section 192.
- (12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
- (13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
- (14) Power to withdraw cases other than appeals, and to try or refer them for trial ; section 528.

*V.—Ordinary Powers of a District Magistrate.*

- (1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
- (2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
- (3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
- (4) Power to cancel bond for keeping the peace, section 125.
- (5) Power to try summarily, section 260.
- (6) Power to quash convictions in certain cases, section 350.
- (7) Power to hear appeals from orders requiring security for good behaviour, section 406.
- (8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
- (9) Power to call for records, section 435.
- (10) Power to revise orders passed under section 514 ; section 515.

## SCHEDULE IV.

## ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH  
WHICH A MA-  
GISTRATE OF  
THE FIRST  
CLASS MAY BE  
INVESTED.

By the Local  
Government.

...

By the District  
Magistrate.

- |   |  |
|---|--|
| <p>(1) Power to require security for good<br/>behaviour, section 110 :</p> <p>(2) Power to make orders as to local<br/>nuisances, section 133 :</p> <p>(3) Power to make orders prohibit-<br/>ing repetitions of nuisances, sec-<br/>tion 143 :</p> <p>(4) Power to make orders under sec-<br/>tion 144 :</p> <p>(5) Power to hold inquests, section<br/>174 :</p> <p>(6) Power to issue process for person<br/>within local jurisdiction who<br/>has committed an offence out-<br/>side the local jurisdiction, sec-<br/>tion 186 :</p> <p>(7) Power to take cognizance of of-<br/>fences upon complaint, section<br/>191 :</p> <p>(8) Power to take cognizance of of-<br/>fences upon police reports, sec-<br/>tion 191 :</p> <p>(9) Power to take cognizance of of-<br/>fences upon information, sec-<br/>tion 191 :</p> <p>(10) Power to try summarily, section<br/>260 :</p> <p>(11) Power to hear appeals from con-<br/>victions by Magistrates of the se-<br/>cond and third classes, section<br/>407 :</p> <p>(12) Power to sell property alleged or<br/>suspected to have been stolen, &amp;c.,<br/>section 524.</p> | <p>(1) Power to make orders prohibiting<br/>repetitions of nuisances, section<br/>143 :</p> <p>(2) Power to make orders under sec-<br/>tion 144 :</p> <p>(3) Power to hold inquests, section<br/>174 :</p> <p>(4) Power to take cognizance of of-<br/>fences upon complaint, section<br/>191 :</p> <p>(5) Power to take cognizance of of-<br/>fences upon police reports, sec-<br/>tion 191 :</p> <p>(6) Power to transfer cases, section<br/>192.</p> |
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## SCHEDULE IV.—(Continued.)

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.	By the Local Government.	<ul style="list-style-type: none"> <li>(1) Power to pass sentence of whipping, section 32 :</li> <li>(2) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(3) Power to make orders under section 144 :</li> <li>(4) Power to hold inquests, section 174 :</li> <li>(5) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(6) Power to take cognizance of offences upon police reports, section 191 :</li> <li>(7) Power to take cognizance of offences upon information, section 191 :</li> <li>(8) Power to commit for trial, section 206.</li> </ul>
		<ul style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 : ...</li> <li>(5) Power to take cognizance of offences upon police reports, section 191.</li> </ul>
	By the District Magistrate.	<ul style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(5) Power to take cognizance of offences upon police reports, section 191 :</li> <li>(6) Power to commit for trial, section 206.</li> </ul>
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	By the Local Government.	

## SCHEDULE IV.—(Concluded.)

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	{ By the District Magistrate.	<ul style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(5) Power to take cognizance of offences upon police reports, section 191.</li> </ul>
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	{ By the Local Government.	Power to call for records, section 435.

## SCHEDULE V.

## FORMS.

## I.—SUMMONS TO AN ACCUSED PERSON.

(See section. 68.)

To \_\_\_\_\_ of \_\_\_\_\_

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by pleader, as the case may be*), before the (*Magistrate*) of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_

Herein fail not.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Seal.)

(Signature.)

## II.—WARRANT OF ARREST.

(See section 75.)

To (*name and designation of the person or persons who is or are to execute the warrant.*)

WHEREAS \_\_\_\_\_ of \_\_\_\_\_ stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said \_\_\_\_\_, and to produce him before me. Herein fail not.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Seal.)

(Signature.)

(See section 76.)

*This warrant may be endorsed as follows :—*

If the said                      shall give bail himself in the sum of  
with one surety in the sum of                      (or two sureties each in the sum  
of                      , to attend before me on the                      day of                      and to continue  
so to attend until otherwise directed by me, he may be released.

Dated this                      day of                      , 18 .

(Signature.)

### III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I, (name), of                      , being brought before the District Magistrate of

(or as the case may be) under a warrant issued to compel my appearance to answer to the charge of                      , do hereby bind myself to attend in the Court of                      on the                      day of                      next to answer to the said charge, and to continue so to attend until otherwise directed by the Court ; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this                      day of                      , 18 .

(Signature.)

I do hereby declare myself surety for the abovenamed                      of                      , that he shall attend before                      in the Court of                      on the                      day of                      next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court ; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this                      day of                      , 18 .

(Signature.)

### IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of                      , punishable under section                      of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found ; and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant) ;

Proclamation is hereby made that the said                      of                      is required to appear at (place) before this Court (or before me) to answer the said complaint within                      days from this date.

Dated this                      day of                      , 18 .

(Seal)

(Signature.)

## V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next at \_\_\_\_\_ o'clock, to be examined touching \_\_\_\_\_, the offence complained of.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Seal.)

(Signature.)

## VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(See section 88.)

To the Police-officer in charge of the Police-station at \_\_\_\_\_

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*); and thereupon a Proclamation was duly issued and published requiring the said \_\_\_\_\_ to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said \_\_\_\_\_ to the value of rupees \_\_\_\_\_ which you may find within the District of \_\_\_\_\_ and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Seal.)

(Signature.)

## ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(See section 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of \_\_\_\_\_ punishable under section \_\_\_\_\_ of the Indian Penal



Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published requiring the said                      to appear to answer the said charge within                      days; and whereas the said                      is possessed of the following property other than land paying revenue to Government in the village (*or town*) of                      , in the District of                      , *viz.*,                      , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this                      day of                      18

(*Seal.*)

(*Signature.*)

#### ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See Section 88.*)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of                      punishable under section                      of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published requiring the said                      to appear to answer the said charge within                      days, but he has not appeared; and whereas the said                      is possessed of certain land paying revenue to Government in the village (*or town*), of                      in the District of

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this                      day of                      , 18

(*Seal.*)

(*Signature.*)

#### VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section 90.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that                      of                      has (*or suspected to have*) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give

evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (*name*) and on the            day of            to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this            day of            , 18            .

(Seal.)

(Signature.)

#### VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS information has been laid (*or complaint has been made*) before me of the commission (*or suspected commission*) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or about to be made*) into the said offence (*or suspected offence*);

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this            day of            , 18            .

(Seal.)

(Signature.)

#### IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 98.)

To (*name and designation of a Police-officer above the rank of a Constable*).

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or sale*) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or documents*),

or stamps, or seals, or coins, as the case may be)—[Add when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin, (as the case may be)] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this       day of       ,  
18 .

(Seal.)

(Signature.)

#### X.—BOND TO KEEP THE PEACE.

(See section 106.)

WHEREAS I, (name), inhabitant of (place), have been called upon to enter into a bond to keep the peace for the term of       , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees       .

Dated this       day of       , 18 .

(Signature.)

#### XI.—BOND FOR GOOD BEHAVIOUR.

(See sections 109 and 110.)

WHEREAS I, (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (state the period), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees       .

Dated this       day of       , 18 .

(Signature.)

(Where a bond with sureties is to be executed, add)—We do hereby declare ourselves sureties for the abovenamed       that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees       .

Dated this       day of       , 18 .

(Signature.)

**XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.***(See section 114.)*

To

of

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information.*) and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorized agent*) at the Office of the Magistrate of on the day of , 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees *when sureties are required, add,* and also to give security by the bond of one (*or two, as the case may be*) surety (*or sureties*) in the sum of rupees (*each, if more than one*), that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of , 18 .

*(Seal.)**(Signature.)***XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.***(See section 123.)*To the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name and address*) appeared before me in person (*or by his authorized agent*) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or a bond with two sureties each in rupees*), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or sureties*) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

*(Seal.)**(Signature.)***XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.***(See section 123.)*To the Superintendent (*or Keeper*) of the jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible

means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

*or*

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day of  
18 .

(*Seal.*)

(*Signature.*)

#### XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections 123 and 124.*)

To the Superintendent (*or* Keeper) of the Jail at                      (*or other officer in whose custody the person is.*)

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the                      day of , and has since duly given security under section                      of the Code of Criminal Procedure,

*or*

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this                      day of  
of , 18 .

(*Seal.*)

(*Signature.*)

## XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(See section 133.)

To (name, description and address) .

WHEREAS it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place), which, &c. (describe the road or public place), by, &c. (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (state the particular trade or occupation and the place where it is carried on,) and that the same is injurious to the public health (or comfort) by reason (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to a different place ;

or

WHEREAS it has been made to appear to me that you are the owner of (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank (or well, or excavation) being without a fence (or insecurely fenced) ;

or

WHEREAS, &amp;c., &amp;c. (as the case may be) ;

I do hereby direct and require you within (state the time allowed) to (state what is required to be done to abate the nuisance) or to appear at  
in the Court of on the day  
of next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c. ;

or

I do hereby direct and require you within (state the time allowed) ; to put up a sufficient fence (state the kind of fence and the part to be fenced), or to appear, &c.

or

I do hereby direct and require you, &c., &c. (as the case may be).

Given under my hand and the seal of the Court, this day of

18 .

(Seal.)

(Signature.)

## XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 138.)

WHEREAS on the day of , 18 , an order was issued to (name) requiring him (state the effect of the order), and whereas the said (name) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the

said recited order is reasonable and proper; I do hereby appoint (*the names &c., of the five or more Jurors*) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within

days from the date of this order at my office at  
 Given under my hand and the seal of the Court, this                      day of  
 , 18 .

(Seal.)

(Signature.)

**XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.**

(See section 140.)

To (*name, description and address*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the                      day of                      have found that the order issued on the                      day of                      requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this                      day of  
 , 18 .

(Seal.)

(Signature.)

**XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.**

(See section 142.)

To (*name, description and address*).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the                      day of                      , 18 , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safe-guard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this                      day of  
 , 18 .

(Seal.)

(Signature.)

**XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.**

(See section 143.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital, guided by Form No. XVI or Form No. XXI, as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this       day of       ,  
18       .

(Seal.)

(Signature.)

## XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(See section 144.)

To (*name, description and address*.)

WHEREAS it has been made to appear to me that you are in possession (or have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this       day of       ,  
18       .

(Seal.)

(Signature.)

## XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, IN DISPUTE.

(See section 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true



I do decide and declare that he is (or they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (or their) possession in the meantime.

Given under my hand and the seal of the Court, this                      day  
of                      , 18 .

(Seal.)

(Signature.)

### XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(See section 146.)

To the Police-officer in charge of the Police-station at                      [or,  
To the Collector of                      ].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day  
of,                      18 .

(Seal.)

(Signature.)

### XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(See section 147.)

A dispute having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which (land or water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (or water) has been open to the enjoyment of such use by the public (or if by an individual or a class of persons, describe him or them), and (if the use can be enjoyed throughout the year) that the said use has been enjoyed within three months of the institution of the said inquiry (or if the use is enjoyable only at particular seasons, say "during the last of the seasons at which the same is capable of being enjoyed");



## XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(See section 218.)

The Magistrate of \_\_\_\_\_ hereby gives notice that he has committed one \_\_\_\_\_ for trial at the next Session; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Signature.)

## XXVIII.—CHARGES.

(See sections 221, 222, 223.)

### (1).—CHARGES WITH ONE HEAD.

(a) I, [*name and office of Magistrate, &c*], hereby charge you (*name of accused person*) as follows:—

(b) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, waged \_\_\_\_\_ war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session (*when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court*).

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b):—

(2) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, with \_\_\_\_\_ the intention of inducing the Hon'ble A. B., \_\_\_\_\_ Member of the Council of the Governor general of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session (*or High Court*).

(3) That you, being a public servant in the \_\_\_\_\_ Department, \_\_\_\_\_ directly accepted from (*state the name*), for another party (*state the name*), a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session (*or High Court*).

(4) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, did \_\_\_\_\_ (*or omitted to do, as the case may be*) such conduct being contrary to the provisions of \_\_\_\_\_ act \_\_\_\_\_ section \_\_\_\_\_, and known by you to be prejudicial to

, and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(5) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the trial of \_\_\_\_\_, before \_\_\_\_\_, stated in evidence that “

”, which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable, under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(6) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed culpable homicide not amounting to murder, causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(7) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(8) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, voluntarily caused grievous hurt to \_\_\_\_\_, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(9) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(10) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*In cases tried by Magistrates, substitute “ within my cognizance ” for “ within the cognizance of the Court of Session, ” and in (c) omit “ by the said Court. ”*

## (II).—CHARGES WITH TWO OR MORE HEADS.

(a) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(b) *First.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence

punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b) :—]

(2) *First*.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed murder by causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly*.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, by causing the death of \_\_\_\_\_, committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) *First*.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly*.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Thirdly*.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Fourthly*.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the inquiry into \_\_\_\_\_ before \_\_\_\_\_, stated in evidence that “ \_\_\_\_\_”, and that you, on or about the day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the trial of \_\_\_\_\_, before \_\_\_\_\_, stated in evidence that “ \_\_\_\_\_”, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrates, substitute “within my cognizance” for “within the cognizance of the Court of Session,” and in (c) omit “by the said Court”.]

(III.)—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.)

I, (name and office of Magistrate, &c.), hereby charge you (name of accused person) as follows :—

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or { High Court, Magistrate, } as the case may be].

And you the said (name of accused) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (state Court by which conviction was had) at of an offence punishable under Chapter XVII of the Indian Penal Code, with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (describe the offence in the words used in the section under which the offence was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OR COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See sections 245 and 258.)

To the Superintendent (or Keeper) of the Jail at

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, (name of prisoner), the 1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar for 18\_\_\_\_, was convicted before me (name and official designation) of the offence of (mention the offence or offences concisely) under section (or sections) of the Indian Penal Code (or of Act \_\_\_\_\_,) and was sentenced to (state the punishment fully and distinctly);

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this                      day of  
 , 18 .

(Seal.)

(Signature.)

**XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS  
BY DISTRESS.**

(See section 250.)

**To the Superintendent (or Keeper) of the Jail at**

Whereas (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely), and the same has been dismissed is frivolous (or vexatious),

and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees                      as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of                      days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day  
of                      , 18                      .

(Seal.)

(Signature.)

### XXXI.—SUMMONS TO A WITNESS.

(See sections 68 and 252.)

To                      of                      .

WHEREAS complaint has been made before me that                      of                      has (*or is suspected to have*) committed the offence of (*state the offence concisely, with time and place*) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the                      day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this                      day  
of                      , 18                      .

(Seal.)

(Signature.)

### XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(See section 326.)

To the District Magistrate of                     

Whereas a Criminal Session is appointed to be held in the Court-house at                      on the                      day of                      next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(Here enter the names of Jurors and Assessors.)

Given under my hand and the seal of the Court, this                      day  
of                      , 18                      .

(Seal.)

(Signature.)

### XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(See section 328.)

To (name) of (place).

Pursuant to a precept directed to me by the Court of Session of  
requiring your attendance as an Assessor (*or* a Juror) at the next Criminal  
Session, you are hereby summoned to attend at the said Court of Session, at  
*(place)* at ten o'clock in the forenoon on the                      day of  
next.

[illegible]

### XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 374.)

**To the Superintendent (or Keeper) of the Jail at**

Whereas at the Session held before me on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. \_\_\_\_\_ of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section \_\_\_\_\_ of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the \_\_\_\_\_ Court of \_\_\_\_\_;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this            day of  
     , 18 .  
*(Seal.)*

.  
*(Signature.)*

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

**To the Superintendent (or Keeper) of the Jail at**

Whereas (*name of prisoner*), (the 1st, 2nd, 3rd, *as the case may be*) prisoner in case No. \_\_\_\_\_ of the Calendar at the Session held before me on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, has been by a warrant of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, committed to your custody under sentence of death, and whereas the order of the \_\_\_\_\_ Court of \_\_\_\_\_ confirming the said sentence has been received by this Court :

This is to authorize and require you the said Superintendent (or Keeper), to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this                  day  
of                  , 18 .

(Seal.) (Signature.)



## XXXVI.—WARRANT AFTER A COMMUTATION OF SENTENCE.

(See sections 381 and 382.)

To the Superintendent (or Keeper) of the Jail at

Whereas at a Session, held on the \_\_\_\_\_ day of \_\_\_\_\_, 18  
 (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case  
 No. \_\_\_\_\_ of the Calendar at the said Session, was convicted of the  
 offence of \_\_\_\_\_, punishable under section \_\_\_\_\_ of the Indian Pe-  
 nal Code, and sentenced to \_\_\_\_\_, and was thereupon committed to  
 your custody; and whereas by the order of the \_\_\_\_\_ Court of  
 (a duplicate of which is hereunto annexed) the punishment adjudged by  
 the said sentence has been committed to the punishment of transportation  
 for life (or, as the case may be);

This is to authorize and require you, the said Superintendent (or Keeper), safely to keep the said (prisoner's name) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words  
 "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Seal.)

(Signature.)

## XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See section 386.)

To (name and designation of the Police-officer or other person, or persons, who is or are to execute the warrant.)

WHEREAS (name and description of the offender) was on the \_\_\_\_\_ day of \_\_\_\_\_ 18 , convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees \_\_\_\_\_, and whereas the said (name), although required to pay the said fine, has not the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name) which may be found within the District of \_\_\_\_\_; and, if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(Seal.)

(Signature.)

XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT  
WHEN A FINE IS IMPOSED.

(See section. 480.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (or view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (or Keeper) of the said Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day  
of                      , 18 .

(Seal.)

(Signature.)

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WIT-  
NESS REFUSING TO ANSWER.

(See section 485.)

To (*name and designation of officer of Court*).

WHEREAS (*name and description*) being summoned (or brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of        days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day of  
18 .

(Seal.)

(Signature.)

**XL.—WARRANT OF IMPRISONMENT OF FAILURE TO PAY MAINTENANCE.**

(See section 488.)

To the Superintendent (or Keeper) of the Jail at

Whereas (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or himself*)] and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of rupees                   ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees                   , being the amount of the allowance for the month (*or months*) of                   : And thereupon an order was made adjudging him to undergo simple (*or rigorous imprisonment in the said jail for the period of*                   ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                  day of  
       , 18 .

(Seal.)

(Signature.)

### XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488.)

To (name and designation of the Police-officer or other person to execute the warrant.

Whereas an order has been duly made requiring (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees \_\_\_\_\_, and whereas the said (name) in wilful disregard of the said order has failed to pay rupees \_\_\_\_\_, being the amount of the allowance for the month (or months) of \_\_\_\_\_ ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name) which may be found within the district of \_\_\_\_\_, and if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done it, immediately upon its execution.

Given under my hand and the seal of the Court, this                  day of  
    , 18     .

(Seal.)

*(Signature.)*

**XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A  
MAGISTRATE.**

*(See sections 496 and 499.)*

I, *(name)*, of *(place)*, being brought before the Magistrate of *(as the case may be)* charged with the offence of \_\_\_\_\_, and required to give security for my attendance in his Court, and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

*(Signature.)*

I hereby declare myself *(or We jointly and severally declare ourselves and each of us)* surety *(or sureties)* for the said *(name)* that he shall attend at the Court of \_\_\_\_\_ on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself *(or we bind ourselves)* to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

*(Signature.)*

**XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO  
GIVE SECURITY.**

*(See section 500.)*

To the superintendent *(or Keener)* of the Jail at \_\_\_\_\_ *(or other officer in whose custody the person is).*

Whereas *(name and description of prisoner)* was committed to your custody under warrant of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, and has since with his surety *(or sureties)* duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said *(name)* from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

*(Seal.)*

*(Signature.)*

## XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 514.)

To the Police-officer in charge of the Police-station at

Whereas (*name, description and address of person*) had failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the District of , by seizure and detention, and if the said amount be not paid within two days, to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this                      day of  
18 .

(Seal.)

(Signature.)

## XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(See section 514.)

To                      of                      .

Whereas on the                      day of                      , 18, you became surety for (*name*) of (*place*) that he should appear before this Court on the day of                      , and bound yourself in default thereof to forfeit the sum of rupees                      to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees;

You are hereby required to pay the said penalty or show cause, within                      days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this                      day of  
18 .

(Seal.)

(Signature.)

## XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To                      of                      .

Whereas on the                      day of                      , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of                      , and bound yourself in default thereof to forfeit the sum of rupees                      to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence*)

*concisely*) committed since you became such surety, whereby your security-bond has become forfeited ;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of ,  
18 .

(Seal.)

(Signature.)

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#### XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(See section 514.)

To

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*) ;

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the District of , by seizure and detention ; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of  
18 .

(Seal.)

(Signature.)

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#### XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(See section 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India ; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*) ;

This is to authorize and require you, the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody with this warrant and him safely to keep in the said jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of ,  
18 .

(Seal.)

(Signature.)

**.XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To (*name, description and address*).

Whereas on the            day of            18            , you entered into a bond not to commit, &c. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees            , or to show cause before me within            days why payment of the same should not be enforced against you.

Dated this            day of            , 18            .

(*Seal.*)

(*Signature.*)

**L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To (*name and designation of Police-officer*) at the Police-station of

Whereas (*name and description*) did on the            day of            , 18            , enter into a bond for the sum of rupees            , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees            which you may find within the District of            , and, if the said sum be not paid within            , to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this            day of            , 18            .

(*Seal.*)

(*Signature.*)

**LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.**

(See section 514.)

To the Superintendent (*or Keeper*) of the Civil Jail at            .

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to her Majesty the Queen, Empress of India, the sum of rupees            ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum

should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (or Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day  
of                      , 18                      .

(*Seal.*)

(*Signature.*)

### LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To the Police-officer in charge of the Police-station at                      .

Whereas (*name, description and address*) did on the                      day of  
                    , 18                      , give security by bond in the sum of rupees                      for the  
good behaviour of (*name, &c., of the principal*), and proof has been given  
before me and duly recorded of the commission by the said (*name*) of the  
offence of                      , whereby the said bond has been forfeited; and  
whereas notice has been given to the said (*name*) calling upon him to show  
cause why the said sum should not be paid, and he has failed to do so or to  
pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees                      which you  
may find within, the District of                      , and, if the said sum be not paid  
within                      , to sell the property so attached, or so much of it as may  
be sufficient to realize the same, and to make return of what you have  
done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this                      day of  
                    , 18                      .

(*Seal.*)

(*Signature.*)

### LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To the Superintendent (or Keeper) of the Civil Jail at

Whereas (*name, description and address*) did on the                      day of  
                    , 18                      , give security by bond in the sum of rupees                      for  
the good behaviour of (*name, &c., of the principal*), and proof of the breach





# THE UNREPEALED REGULATIONS OF THE BENGAL CODE.

## REGULATION I OF 1793.

A REGULATION for enacting into a Regulation, certain Articles of a Proclamation bearing date 22nd March, 1793.—PASSED by the Governor-General in Council, on the 1st May, 1793, corresponding with the 21st Bysaak 1200 Bengal era; the 6th Bysaak 1200 Fussily; the 21st Bysaak 1200 Willaity; the 6th Bysaak 1850 Sumbat; and the 19th Ramzaan 1207 Higeree.

I. THE following articles of the proclamation relative to the limitation

Preamble.

of the public demand upon the lands, addressed by the Governor-General in Council to the *zemindars*, independent *talookdars*, and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar, and Orissa, are hereby enacted into a regulation, which is to have force and effect from the 22nd March 1793, the date of the Proclamation.

### PROCLAMATION.

II. Art. I.—In the original regulations for the decennial settlement of the public revenues of Bengal, Behar, and Orissa, passed for those provinces respectively, on the 18th September 1789, the 25th November 1789, and the 10th February 1790, it was notified to the proprietors of land with or on behalf of whom a settlement might be concluded, that the *jumma* assessed upon their lands under those regulations, would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East-India Company, and not otherwise.

III. Art. II.—The Marquis Cornwallis, Knight of the most noble order of the Garter, Governor-General in Council, now notifies to all *zemindars*, independent *talookdars* and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar, and Orissa, that he has been empowered by the Honourable Court of Directors for the affairs of the East India Company, to declare the *jumma*, which has been, or may be, assessed upon their lands under the regulations abovementioned, fixed for ever.

IV. Art. III.—The Governor-General in Council accordingly declares to the *zemindars*, independent *talookdars*, and other actual proprietors of land, with or on behalf of whom a settlement has been concluded under the regulations above mentioned, that at the expiration of the term of the settlement, no alteration will be made

*Jumma* assessed upon the lands of proprietors with or on behalf of whom a settlement has been concluded, declared fixed for ever.

in the assessment which they have respectively engaged to pay, but that they, and their heirs, and lawful successors, will be allowed to hold their estates at such assessment for ever.

V. Art. IV.—The lands of some *zemindars*, independent *talookdars*, and other actual proprietors of land, having been

*Jumma* which may be hereafter agreed to by the proprietors whose lands are held *khas*, or let in farm, declared fixed for ever.

held *khas*, or let in farm, in consequence of their refusing to pay the assessment required of them under the regulations abovementioned, the Governor-General in Council now notifies to the *zemindars*, independent *talookdars*, and other actual proprietors of land, whose lands are held *khas*, that they shall be restored to the management of their lands, upon their agreeing to the payment of the assessment which has been, or may be required of them, in conformity to the regulations above-mentioned; and that no alteration shall afterwards be made in that assessment, but that they, and their heirs, and lawful successors, shall be permitted to hold their respective estates at such assessment for ever; and he declares to the *zemindars*, independent *talookdars*, and other actual proprietors of land, whose lands have been let in farm, that they shall not regain possession of their lands, before the expiration of the period for which they have been farmed (unless the farmers shall voluntarily consent to make over to them the remaining term of their lease, and the Governor-General in Council shall approve of the transfer) but that at the expiration of that period, upon their agreeing to the payment of the assessment which may be required of them, they shall be reinstated, and that no alteration shall afterwards be made in that assessment, but that they, and their heirs, and lawful successors, shall be allowed to hold their respective estates at such assessment for ever.

VI. Art. V.—In the event of the proprietary right in lands that are,

*Jumma* at which lands belonging to Government may be transferred to individuals, declared fixed for ever.

or may become, the property of Government, being transferred to individuals, such individuals, and their heirs, and lawful successors, shall be permitted to hold the lands at the assessment at which they may be transferred for ever.

VII. Art. VI.—It is well known to the *zemindars*, independent

assessment in former times liable to variation at the discretion of Government.

*talookdars*, and other actual proprietors of land, as well as to the inhabitants of Bengal, Behar, and Orissa, in general, that, from the earliest times, until the present period, the public assessment upon the lands has never been fixed, but that, according to established usage and custom, the rulers of these provinces, have from time to time, demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of the management of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the *ryots*. The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a

Motives of the Court of Directors for abolishing this usage, and fixing the assessment, which is declared unalterable by any future Government.

view to promote the future ease and happiness of the people, authorized the foregoing declarations; and the *zemindars*, independent *talookdars*, and other actual proprietors of land, with or on behalf of whom a settlement has been, or may be, concluded, are to consider these orders fixing the amount of the assessment, as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

The Governor-General in Council trusts that the proprietors of land,

Proprietors expected to improve their estates, in consequence of the profits being secured to them.

sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs, or successors, by the present, or any future Government, for an augmentation of the public assessment, in consequence of the improvement of their respective estates.

To discharge the revenues at the stipulated periods without delay or

Conduct to be observed by the proprietors of land towards their dependent *talookdars* and *ryots*.

evasion, and to conduct themselves with good faith and moderation towards their dependent *talookdars* and *ryots*, are duties at all times indispensably required from the proprietors of land; and a strict observance of those duties is now more than ever incumbent upon them, in return for the benefits which they will themselves derive from the orders now issued. The Governor-General in Council therefore expects, that the proprietors of land will not only act in this manner themselves towards their dependent *talookdars* and *ryots*, but also enjoin the strictest adherence to the same principles, in the persons whom they may appoint to collect

No claims for remissions or suspensions to be admitted on any account.

the rents from them. He further expects, that without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them, that in future no claims or applications, for suspensions, or remissions, on account of drought, inundation or other calamity of season, will be attended to, but that in the event of any *zemindar*, independent *talookdar*, or other actual proprietor of land, with or on behalf of whom a settlement has been, or may be, concluded, or his or her heirs, or successors, failing in the punctual discharge of the public revenue which has

Lands of proprietors to be invariably sold for arrears.

been, or may be, assessed upon their lands under the above-mentioned regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively, and invariably take place.

VIII. Art. VII.—To prevent any misconstruction of the foregoing articles, the Governor-General in Council thinks it necessary to make the following declarations to the *zemindars*, independent *talookdars*, and other actual proprietors of land.

*First.* It being the duty of the ruling power to protect all classes of

Government to enact such regulations as they may think necessary for the welfare of the dependent *talookdars* and cultivators, and proprietors not to withhold the revenue on that account.

people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent *talookdars*, *ryots*, and other cultivators of the soil, and no *zemindar*, independent *talookdar*, or other actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment, which they have respectively agreed to pay.

*Second.* The Governor-General in Council having on the 28th July

All internal duties that may be hereafter established to belong exclusively to Government.

1790, directed the *sayer* collections to be abolished, a full compensation was granted to the proprietors of land, for the loss of revenue sustained by them in consequence of this abolition; and he now declares

that if he should hereafter think it proper to re-establish the *sayer* collections, or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land will be admitted to any participation thereof, or be entitled to make any claims for remissions of assessment on that account.

**Third.** The Governor-General in Council will impose such assessment as he may deem equitable, on all lands at present alienated and paying no public revenue, which have been, or may be, proved to be held under illegal or invalid titles. The assessment so imposed will belong to Government, and no proprietor of land will be entitled to any part of it.

**Fourth.** The *jumma* of those *zemindars*, independent *talookdars*, and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of any allowances which have been made to them in the adjustment of their *jumma*, for keeping up *thanahs*, or police establishments, and also of the produce of any land which they may have been permitted to appropriate for the same purpose; and the Governor-General in Council reserves to himself the option of resuming the whole or part of such allowances, or produce of such lands, according as he may think proper, in consequence of his having exonerated the proprietors of land from the charge of keeping the peace, and appointed officers on the part of Government to superintend the police of the country. The Governor-General in Council however declares, that the allowances, or produce of lands, which may be resumed, will be appropriated to no other purpose but that of defraying the expense of the police; and that instructions will be sent to the collectors, and the produce of such lands, to the *jumma* of the proprietors of land, but to collect the amount from them separately.

**Fifth.** Nothing contained in this proclamation, shall be construed to render the lands of the several descriptions of disqualified proprietors, specified in the first article of the Regulations regarding disqualified landholders, passed on the 15th July 1791, liable to sale for any arrears which have accrued, or may accrue, on the fixed *jumma* that has been, or may be, assessed upon their lands under the above-mentioned Regulations for the decennial settlement, provided that such arrears have accrued, or may accrue, during the time that they have been, or may be, dispossessed of the management of their lands, under the said Regulations of the 15th July 1791. It is to be understood however, that whenever all or any of the descriptions of disqualified landholders specified in the first article of the last-mentioned Regulations, shall be permitted to assume, or retain, the management of their lands in consequence of the ground of their disqualification no longer existing, or of the Governor-General in Council dispensing with, altering, or abolishing those Regulations, the lands of such proprietors will be held responsible for the payment of the fixed *jumma*, that has been, or may be, assessed thereon, from the time that the management may devolve upon them, in the same manner as the lands of all actual proprietors of land who are declared qualified for the management of their estates, and also of all actual proprietors who are unqualified for such management, by natural or other disabilities, but

do not come within the descriptions of disqualified landholders specified in the first article of the Regulations of the 15th July 1791, are, and will be held answerable for any arrears that are, or may become, due from them, on the fixed *jumma* which they, or any persons on their behalf, have engaged, or may engage, to pay under the above-mentioned Regulations for the decennial settlement.

**IX. Art. VIII.**—That no doubt may be entertained, whether proprietors of land are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council notifies to the *zemindars*, independent

Proprietors declared privileged to transfer their lands without the sanction of Government.

*talookdars*, and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights, in the whole, or any portion, of their respective estates, without applying to Government for its sanction to the transfer, and that all such transfers will be held valid, provided that they be conformable

Provided the transfer be conformable to law, and not contrary to any existing regulation.

to the Mahomedan or the Hindoo laws, (according as the religious persuasions of the parties to each transaction, may render the validity of it determinable by the former or the latter code,) and that they be not repugnant to any Regulations now in force, which have been passed by the British administrations, or to any Regulations that they may hereafter enact.

**X. Art. IX.**—From the limitation of the public demand upon the

lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements,) of any landed property for the assessment on which a distinct engagement has been or may be entered into between Government and the proprietor, or that may be separately assessed although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed *jumma* assessed upon it (which, agreeably to the foregoing declarations, is to remain unalterable for ever, to whomsoever the property may be transferred,) with the whole of its produce, allowing for the charges of management. But it is also essential, that a notification should be made of the principles upon which the fixed assessment charged upon any such estate, will be apportioned on the several divisions of it, in the event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots, or of a portion of it being transferred in one, or in two or more lots, or of its being joint property, and a division of it being made amongst the proprietors; otherwise, from the want of a declared rule for estimating the proportion of the fixed *jumma* with which the several shares would be chargeable in such cases, the real value of each share would be uncertain, and consequently the benefits expected to result from fixing the public assessment upon the lands, would be but partially obtained. The Governor-General in Council has accordingly prescribed the following rules for apportioning the fixed assessment in the several cases abovementioned; but as Government might sustain a considerable loss of revenue by disproportionate allotments of the assessment, were the apportioning of it in any of the cases above specified to be left to the proprietors, he requires that all such transfers or divisions

lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements,) of any landed property for the assessment on which a distinct engagement has been or may be entered into between Government and the proprietor, or that may be separately assessed although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed *jumma* assessed upon it (which, agreeably to the foregoing declarations, is to remain

unalterable for ever, to whomsoever the property may be transferred,) with the whole of its produce, allowing for the charges of management. But it is also essential, that a notification should be made of the principles upon which the fixed assessment charged upon any such estate, will be apportioned on the several divisions of it, in the event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots, or of a portion of it being transferred in one, or in two or more lots, or of its being joint property, and a division of it being made amongst the proprietors; otherwise, from the want of a declared rule for estimating the proportion of the fixed *jumma* with which the several shares would be chargeable in such cases, the real value of each share would be uncertain, and consequently the benefits expected to result from fixing the public assessment upon the lands, would be but partially obtained. The Governor-General in Council has accordingly prescribed the following rules for apportioning the fixed assessment in the several cases abovementioned; but as Government might sustain a considerable loss of revenue by disproportionate allotments of the assessment, were the apportioning of it in any of the cases above specified to be left to the proprietors, he requires that all such transfers or divisions

as may be made by the private act of the parties themselves, be notified to the collector of the revenue of the *zillah* in which the lands may be situated, or such other officer as Government may in future prescribe, in order that the fixed *jumma* assessed upon the whole estate, may be apportioned on the several shares in the manner hereafter directed, and that the names of the proprietors of each share, and the *jumma* charged thereon, may be entered upon the public registers, and that separate engagements for the payment of the *jumma* assessed upon each share, may be executed by the proprietors, who will thenceforward be considered as actual proprietors of land. And the Governor-General in Council declares, that if the parties to such transfers or divisions shall omit to notify them to the collector of the revenue of the *zillah*, or such other officer as may be hereafter prescribed for the purposes before mentioned, the whole of such estate will be held responsible to Government for the discharge of the fixed *jumma* assessed upon it, in the same manner as if no such transfer or division had ever taken place.

But the transfer of dependent *talooks*, not to affect the rights or claims of Government in any respect.

The Governor-General in Council thinks it necessary further to notify, in education of the declarations contained in this article, (which are conformable to the principles of the existing Regulations,) that if any *zemindar*, independent *talookdar*, or other actual proprietor of land, shall dispose of a portion of his or her lands as a dependent *talook*, the *jumma* which may be stipulated to be paid by the dependent *talookdar*, will not be entered upon the records of Government, nor will the transfer exempt such lands from being answerable, in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor or his or her heirs or successors falling in arrear from any cause whatever, nor will it be allowed in any case to affect the rights or claims of Government, any more than if it had never taken place.

*First.* In the event of the whole of the lands of a *zemindar*, independent *talookdar*, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, under the regulations above-mentioned, being exposed to public sale by the order of the Governor-General in Council, for the discharge of arrears of assessment, or in consequence of the decision of a court of justice, in two or more lots, the assessment upon each lot, shall be fixed at an amount which shall bear the same proportion to its actual produce, as the fixed assessment upon the whole of the lands sold, may bear to the whole of their actual produce. This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor-General in Council may hereafter adopt, and the purchaser or purchasers of such lands, and his, or her, or their heirs and lawful successors, shall hold them at the *jumma* at which they may be so purchased for ever.

*Second.*—When a portion of the lands of a *zemindar*, independent *talookdar*, or other actual proprietor of land, with or on behalf of whom a settlement has been, or may be concluded, under the Regulations before mentioned, shall be exposed to public sale by order of the Governor-General in Council, for the liquidation of arrears of assessment, pursuant to the decision of a court of justice, the assessment upon such lands, if disposed of in one lot, shall be fixed at an amount which shall bear the same proportion to their actual produce, as the fixed assessment upon the whole of the lands of such proprietor, including those disposed of, may bear to the whole of their actual produce. If the lands sold shall be disposed of in two or more lots, the assessment upon each lot shall be fixed

at an amount, which shall bear the same proportion to its actual produce, as the fixed assessment upon the whole of the lands of such proprietor, including those sold, may bear to the whole of their actual produce. The actual produce of the whole of the lands of such proprietor, whether the portion of them which may be sold be disposed of in one or in two or more lots, shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other regulations as the Governor-General in Council may hereafter enact, and the purchaser or purchasers of such lands, and his, or her, or their heirs or successors, will be allowed to hold them at the *jumma* at which they may be so purchased for ever; and the remainder of the public *jumma*, which will consequently be payable by the former proprietor of the whole estate on account of the portion of it that may be left in his or her possession, will continue unalterable for ever.

*Third.* When a *zemindar*, independent *talookdar*, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, shall transfer the whole of his or her estate, in two or more distinct portions, to two or more persons, or a portion thereof to one person, or to two or more persons in joint property, by private sale, gift, or otherwise, the assessment upon each distinct portion of such estate so transferred, shall be fixed at an amount which shall bear the same proportion to its actual produce, as the assessment upon the whole of the estate of the transferring proprietor, of which the whole or a portion may be so transferred, may bear to the whole of its actual produce. This produce shall be ascertained in the mode that is or may be prescribed in the existing Regulations, or such other Regulations as Government may hereafter adopt, and the person or persons to whom such lands may be transferred, and his, or her, or their heirs and lawful successors, shall hold them at the *jumma* at which they may be so transferred, for ever: and, where only a portion of such estates shall be transferred the remainder of the public *jumma* which will consequently be payable by the former proprietor of the whole estates on account of the lands that may remain in his or her possession, shall be continued unalterable for ever.

*Fourth.* Whenever a division shall be made of lands, the settlement of which has been or may be concluded with, or on behalf of the proprietor or proprietors, and that are or may become the joint property of two or more persons, the assessment upon each share, shall be fixed at an amount, which shall bear the same proportion to its actual produce, as the fixed *jumma* assessed upon the whole of the estate divided, may bear to the whole of its actual produce. This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor-General in Council may hereafter adopt, and the sharers, and their heirs and lawful successors, shall hold their respective shares at the *jumma* which may be so assessed upon them for ever.

Rules for adjusting the *jumma* of lands held *khas*, or let in farm, in the event of the whole or any part of them being disposed of by public sale, or private transfer or divided amongst the proprietors, and the *jumma* so adjusted declared fixed for ever.

XI. Art. X.—The following rules are prescribed respecting the adjustment of the assessment on the lands of *zemindars*, independent *talookdars*, and other actual proprietors of land, whose lands are or may be held *khas* or let in farm, in the event of their being disposed of by public sale, or transferred by any private act of the proprietor, or of their being joint property, and a division of them taking place amongst the proprietors.



*First.* If the whole, or a portion, of the lands of a *zemindar*, independent *talookdar*, or other actual proprietor of land, who may not have agreed to the payment of the assessment proposed to him or her under the Regulations above-mentioned, and whose lands are or may be held *khas*, or let in farm, shall be exposed to public sale, in one or in two or more lots, pursuant to the decree of a court of justice, such lands, if *khas*, shall be disposed of at whatever assessment the Governor-General in Council may deem equitable, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold the lands at the assessment at which they may be so purchased for ever. If the lands, at the time of their being exposed to sale, shall be held in farm, and shall be put up in one or in two or more lots, they shall be disposed of under the following conditions. The purchaser or purchasers, shall receive during the unexpired part of the term of the lease of the farmer, whatever such proprietor shall have been entitled to receive in virtue of his or her proprietary rights, on account of the lands so purchased, and such purchaser or purchasers, shall engage to pay at the expiration of the lease of the farmer, such assessment on account of the lands as Government may deem equitable. The sum to be received by the purchaser or purchasers during the unexpired part of the term of the lease of the farmer, and the *jumma* to be paid by such purchaser or purchasers after the expiration of the lease, shall be specified at the time of the sale, and such purchaser or purchasers, and his or her or their heirs and lawful successors, shall be allowed to hold the lands at the assessment at which they may be so purchased for ever.

*Second.* If a *zemindar*, independent *talookdar*, or other actual proprietor of land, whose lands are or may be held *khas*, or let in farm, shall transfer by private sale, gift, or otherwise, the whole or a portion of his or her lands in one, or in two or more lots, the person or persons to whom the lands may be so transferred, shall be entitled to receive from Government, (if the lands are held *khas*), or from the farmer, (if the lands are let in farm) the *maliconnah* to which the former proprietor was entitled on account of the lands so transferred. Persons to whom such lands may be so transferred, will stand in the same predicament as the *zemindars*, independent *talookdars*, or other actual proprietors of land, mentioned in the fourth article, whose lands are held *khas*, or have been let in farm, in consequence of their refusing to pay the assessment required of them under the before-mentioned Regulations for the decennial settlement, and the declarations contained in that article, are to be held applicable to them.

*Third.* In the event of a division being made of lands that are or may become, the joint property of two or more persons, and which are or may be held *khas* or let in farm, the proprietors of the several shares will stand in the same predicament with regard to their respective shares as the *zemindars*, independent *talookdars* and other actual proprietors of land specified in the fourth article, whose lands have been let in farm, or are held *khas*, in consequence of their having refused to pay the assessment required of them under the beforementioned Regulations for the decennial settlement, and the declarations contained in that article are to be considered applicable to them.

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## REGULATION VIII OF 1793.

A REGULATION for re-enacting with Modifications and Amendments, the Rules for the decennial Settlement of the public Revenue payable from the Lands of the Zemindars, independent Talookdars, and other actual Proprietors of Land, in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.—PASSED by the Governor-General in Council, on the 1st May 1793; corresponding with the 21st Bysaak 1200 Bengal era; the 6th Bysaak 1200 Fussily; the 21st Bysaak 1200 Willaity; the 6th Bysaak 1850 Sumbut and the 19th Ramzaan 1207 Higeree.

I to III. (Repealed by Act XVI of 1874).

Settlement under certain restrictions, to be concluded with the actual proprietors of the soil.

IV. The settlement, under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether *zemindars*, *talookdars*, or *chowdhries*.

V. to XII. (Repealed by Act XVI of 1874).

XIII. *Talookdars*, whose *talooks* have been ordered to be separated, are not to be permitted to pay the revenue assessed upon their lands, through the *zemindars*, or other actual proprietors of estates, as heretofore.

Order for the separation of independent *talooks*, to be considered as positive.

XIV. *Talookdars*, who in consequence of the rules in sections 5 and 9, may be separated from the *zemindars*, or other actual proprietors of estates through whom they heretofore paid their revenues, are to pay their revenue in future immediately into the Collector's treasury, except in districts, where from the number of *talooks*, or other cause, this mode would be attended with considerable inconvenience, in which case *tehsildars*, or Native Collectors, are to be appointed to receive the revenue of the *talooks* in such districts.

Separated *talookdars* to pay their revenue immediately into the collector's treasury, except in particular cases, in which *tehsildars* are to be appointed to receive it.

XV. *Zemindars*, or other actual proprietors of land, from whose *zemindarees*, or estates, *talooks* may be separated, shall not be appointed *tehsildars* to receive the revenue of the *talooks* so separated, but the office of *tehsildar* shall in every instance be given to some other person of character and responsibility, and the whole expense of it is to be defrayed by Government.

Proprietors from whose estates *talooks* may be separated, shall not be appointed *tehsildars*.

This office, to whom to be given, and the expense incident to it, how to be defrayed.

XVI. to XVIII. (Repealed by Act XII of 1876).

XIX. *Istemrardars*, however, who have not got possession of their lands to the exclusion, or without the consent of the actual proprietors, as the *mocurrereedars* mentioned in section 18, are supposed to have done, but hold them of the proprietors on *pottah*, or lease, are to be considered as a species of *pottah talookdars*, and the settlement is to be made with them as hereafter specified.

Description of *istemrardars* to be considered as *pottah talookdars*.

**XX. The exceptions to the General order<sup>\*</sup> for the conclusion of the**

Exceptions to the general orders for the conclusion of the decennial settlement with the actual proprietors of the soil.

decennial settlement with the actual proprietors of the soil, contained in section 4, include the following descriptions of persons: females, (excepting those whom the Governor-General in Council may judge competent to the management of their own estates) minors, idiots, lunatics, or others rendered incapable of managing their lands by natural defects or infirmities of whatever nature; provided, however, with regard to the whole of these descriptions, that they are not partners in the *zemindarees*, independent *talooks*, or other estates held by them, with others of a different description, in which case, themselves or guardians are allowed, with their partners, to engage for the settlement of their lands, and elect a joint manager, under the restrictions hereafter mentioned.

Lands of proprietors included in the above exceptions to be managed by persons appointed by Government.

**XXI. The lands of disqualified proprietors coming within the above descriptions, are to be managed for the benefit of the proprietors, by persons appointed to the trust by Government.**

**XXII. A further exception has been made to proprietors in balance to**

Further exception with respect to proprietors of land in balance to Government, and unable to pay the arrears due from them.

Government, and unable to pay the arrears due from them; in which instances, no settlement is to be concluded with the defaulting proprietors, but their lands are to be let in farm, or held *khas*, for a period of three years at the discretion of the Collector.

**XXIII to XXV. (Repealed by Regulation XVII of 1805.)**

Determination of the majority of the proprietors to be binding on the remainder, in agreeing to the *jumma* of undivided estates.

But the sharers, if dissatisfied, may obtain a division of their lands.

**XXVI. The determination of the majority of the proprietors present, under the restrictions specified in section 23, is also to be binding on the remainder, in agreeing, or disagreeing to the *jumma* proposed for undivided estates: the sharers however, if dissatisfied, may obtain a division of their lands, and a proportionate allotment of the revenue assessed thereon, but at their own expense.**

**XXVII. When a portion of land stands in the joint names of several**

Rules respecting the settlement of land standing in the joint names of several proprietors, or of one for many, each proprietor having his separate share in his own possession.

proprietors or of one for many, but each proprietor has his separate share in his own possession and management or in that of an agent for him, the settlement is to be made for each share with the person in possession, and his land to be held exclusively responsible for the revenue assessed upon it.

**XXVIII, XXIX. (Repealed by Act XII of 1876.)**

**XXX. Where the property in lands is disputed, the settlement is to**

Settlement of disputed estates to be made with the proprietor in possession.

be made with the proprietor in possession, under an express declaration, that he is nevertheless liable to the claims upon the estate, which is to be transferable to any other person to whom the property may be subsequently adjudged.

**XXXI. If a case should occur, in which none of the claimants shall**

Mode to be observed in cases where none of the claimants shall have been previously in possession.

have been previously in possession, they are to be allowed to appoint a manager until their claims shall have been determined in the *deranny adawlut* of the *zillah*: but if they should not agree to a manager, the lands are to be held *khas*, and the surplus produce, after dis-

charging the revenue, is to be kept in deposit until the right of property shall be adjudged.

Rules for the settlement, in cases where disputes exist concerning the boundaries of lands.

sion of the disputing parties respectively.

**XXXIII.** The special rules for fixing the assessment of the three provinces respectively, adapted to the local circumstances of each, commence with section 68, and the following general rules have been prescribed in addition thereto.

**XXXIV.** The allowances of the *cauzies* and *canoongoes*, heretofore paid by the landholders, as well as any public pensions, hitherto paid through the landholders, are to be added to the amount of the *jumma*, and in future paid by the Collectors of the revenue of the several *zillahs*, on the part of Government, under the rules and restrictions laid down for their guidance with regard to such payments, in the resolutions passed by the Governor-General in Council on the 10th June 1791, and re-enacted with modifications by Regulation XXIV, 1793.\*

**XXXV.** The assessment is to be fixed exclusive and independent of all duties, taxes, and other collections, known under the general denomination of *sayer*; the collections made in the *gunjes*, *haruts*, and *bazars* situated within the limits of the town of Calcutta excepted, and excepting also the collections confirmed to the proprietors and holders, of *gunjes*, *bazars*, and *haruts*, by the resolutions passed by the Governor-General in Council on the 11th of June 1790.

**XXXVI.** The assessment is also to be fixed exclusive and independent of all existing *lakheraje* lands, whether exempted from the *kheraje* (or public revenue) with or without due authority.

**XXXVII.** The above exception, however, is not meant to include the *malikanah* lands in Behar, or the *nanker*, *khomer*, *neej-joot*, and other private lands of the *zemindars* and independent *talookdars*, or other actual proprietors of land in Bengal and Midnapore, regarding which the follownig rules have been prescribed :

**XXXVIII.** Where the *zemindars*, or other actual proprietors of land, in Behar, have resigned, or have been deprived of the management of their lands, retaining possession of a tithe as *malikanah*, the latter is to be re-annexed, and the *zemindars* or other actual proprietors, are to be required to engage for the whole of their estates including the *malikanah* lands ; unless such lands be held as *malikanah* under grants made or confirmed by the Governor-General in Council, or the supreme authority of the country for the time being, and have been sold, or mortgaged, and given in possession to the mortgagee, in which case

\* Repealed by Act XXIII of 1871.

they are to be exempted from this rule. Grants for *malikanah* lands not made or confirmed by the supreme authority of the country, are declared invalid by the Regulations passed on the 8th August 1788. If the Collectors, however, should be of opinion, that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Board of Revenue.

**XXXIX.** The *nanker*, *khomer*, *neej-joot*, and other private lands,

*Nanker, khomer, neej-joot* and other private lands of the proprietors, in Bengal and Orissa, to be annexed to the *malguzaree* lands, and the *jumma* fixed upon the whole.

Modification of the rule.

appropriated by the *zemindars*, independent *talookdars* and other actual proprietors of land, in Bengal and Orissa, to the subsistence of themselves and families, shall be also annexed to the *malguzaree* lands, and the ten years' *jumma* fixed upon the whole under the following modification; that such proprietors as may decline to engage for their lands, be allowed the option of retaining possession of their private lands, above specified, upon the terms on which they have hitherto possessed them, provided they shall prove to the satisfaction of the Board of Revenue, that they held them under a similar tenure, previous to the 12th August 1765, the date of the grant of the *dewanny* to the Company, and have hitherto been permitted to keep possession of them, whenever their *zemindarees* or estates have been held *khas* or let in farm, but not otherwise. In the event of such proof and of their availing themselves of the option above given to retain possession of their private lands, a deduction adequate to the neat produce of such lands, is to be made from the amount of the allowance fixed for excluded proprietors by section 44.

**XL.** The above consolidation of the *malguzaree* and private lands, is

The consolidation of the *malguzaree* and private lands to be made also in *talooks*, continued under proprietors on whom they have been hitherto dependent.

Motive of this consolidation.

also to be made in the *talooks* continued under the proprietors on whom they have hitherto been dependent; not however with a view of increasing the rents of the *talookdars*, but in order to make the whole of the lands composing their *talooks*, answerable for their proportion of the public assessment allotted thereon.

**XLI.** The *chakeran* lands, or lands held by public officers, and private

*Chakeran* lands to be annexed to the *malguzaree* lands, and declared responsible for the public revenue.

servants, in lieu of wages, are also not meant to be included in the exception contained in section 36. The whole of these lands in each province, are to be annexed to the *malguzaree* lands, and declared responsible for the public revenue assessed on the *zemindarees*, independent *talooks* or other estates, in which they are included, in common with all other *malguzaree* lands therein.

**XLII.** (Repealed by Act XVI of 1874).

**XLIII.** In the event of any proprietor declining to engage for the

Process to be observed when the landholders decline engaging for the *jumma* proposed to them.

settlement of his lands at the *jumma* proposed to him, the Collector is to communicate the objections offered, with his opinion respecting them, to the Board of Revenue. That Board is to determine the proper assessment, after making such further enquiries as they may think necessary; and the objecting proprietor is to be required to engage for such assessment without further delay; and, in the event of his refusal, which is to be given in writing, his lands are to be let in farm, or held *khas*, as the Board of Revenue may in each instance think most expedient.

XLIV to XLVII. (Repealed by Act XVI of 1874).

XLVIII. (Repealed by Act XII of 1876).

XLIX. It is to be understood, however, that *istemrardars* (*mocurereedars*) of the nature of those described in section 18, who have held their land, at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government, or by the *zemindar* or other actual proprietor of land, should he engage for his own lands. With regard to such *istemrardars* also, as have not held their lands at a fixed rent for so long a period, if the *zemindar* or other actual proprietor of land, has bound himself by the deed which he may have executed, not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have voluntarily agreed to receive.

Restrictions regarding the assessments of a certain description of *istemrardars* who are to be considered as leaseholders.

L. This last restriction imposed on the *zemindar*, or other actual proprietor of land, in section 49, is not to be considered to preclude the officer of Government or farmer, in the event of the *zemindaree* being held *khas*, or let in farm, from assessing such *istemrardars*, according to the general rate of the district.

To what the last restriction imposed on actual proprietors of land in the preceding section is not to extend.

Sections 51-55 repealed by Act VIII of 1885.

LVI-LVII.—(Repealed by Act XII of 1876).

LVIII.—(Repealed by Regulation V of 1812).

LIX-LX.—(Repealed by Act XII of 1876).

LXI.—(Repealed by Act XVI of 1874).

LXII.—(Repealed by Regulation XII of 1817).

LXIII.—(Repealed by Act XVI of 1874).

LXVI. *Zemindars*, independent *talookdars*, and other actual proprietors of land, dependent *talookdars*, farmers of land holding farms immediately of Government, and all persons farming lands of the abovementioned descriptions of landholders and farmers of land, and their respective officers, agents, servants, dependants, and *ryots*, are prohibited from taking cognizance of, or interfering in matters or causes coming within the jurisdiction of the courts of civil judicature, or the courts of circuit, or the magistrates, under pain of being liable to the payment of such fine to Government, and damages to the party injured, as the court of judicature in which they may be prosecuted for the act, may deem it proper to impose and award.

Landholders and farmers of land of every description, and their dependants, prohibited interfering in any matters coming within the cognizance of the civil or criminal courts of judicature, or the magistrates.

LXVII.—Clause 1 to 4.—(Repealed by Act XII of 1876).

*Fifth*.—In the original rules above-mentioned, it was also directed, that if in any instance, the regulations should appear inapplicable to the circumstances of any particular district, the collector should attend to the spirit of them, and carry them into execution in such mode as circumstances might allow, reporting any al-

Collector to attend to the spirit of the rules in this regulation, where they may not be applicable to particular districts.

terations or modifications which he might deem necessary. This rule is to be considered still in force in forming any settlements which remain to be concluded, but it is not to be construed to empower the collector to exercise any judicial authority.

Restrictions under which this rule is to be applied.

*Sixth.*—It was further ordered in the original rules before mentioned, that if from want of sufficient materials or information, or on account of other impediments, the collectors should be unable to complete the settlement of all the *purgunnahs* under their charge, agreeably to the prescribed plan, within the year 1197 of the eras current in the three provinces respectively, the settlement was to be made for one year only, according to the principles laid down in the regulations of the 25th April 1788, for the settlement of 1196, the year preceding the first year of the decennial settlement.

Sec. 68 to 101 Repealed by Act XVI of 1874.

## REGULATION XIX OF 1793.

A REGULATION for re-enacting, with modifications, the Rules passed by the Governor-General in Council on the 1st December 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue of those termed *Badshahee* or *Royal*; and for determining the amount of the annual assessment to be imposed on land so held, which may be adjudged or become liable to the payment of public revenue.—PASSED by the Governor-General in Council on the 1st May 1793; corresponding with the 21st Bysaak 1200 Bengal era; the 6th Bysaak 1200 *Fussily*; the 21st Bysaak 1200 *Willaity*; the 6th Bysaak 1850 *Sumbut*; and the 19th *Ramzaan* 1207 *Higeree*.

I. By the ancient law of the country, the ruling power is entitled to a

Preamble.

certain proportion of the produce of every *beegha* of land (demandable in money or kind according to local custom,) unless it transfers its right thereto for a term, or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce, and the sum payable to the public, whilst he continues to discharge the latter. As a necessary consequence of this law, if a *zemindar* made a grant of any part of his lands to be held exempt from the payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction. Had the validity of such grants been admitted, it is obvious that the revenue of Government would have been liable to gradual diminution. Previous, however, to the Company's accession to the *dewanny*, numerous grants of this description were made, not only by the *zemindars*, but by the officers of Government appointed to the temporary superintendence of the collection of the revenue, under the pretext that the produce of the lands was to be applied to religious or charitable uses. Of these grants, some were applied to the purposes for which they were professed to have been made,

but in general, they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies. In conformity to the principles which prevailed under the native administration, the British Government have at various times declared all grants for holding land exempt from the payment of revenue, made since the date of the Company's accession to the *dewanny* without their sanction, illegal and void. Their lenity, however, induce them to adopt it as a principle, that grants of this description made previous to the date of the *dewanny*, and provided the grantees had obtained possession, should be held valid to the extent of the intentions of the grantor, as ascertainable from the terms of the writings by which the grants might have been made, or from their nature and denomination. But no complete register of these exempted lands having been formed upon the Company's accession to the *dewanny*, nor subsequent to that period, many *zemindars*, as well as the temporary farmers of the public revenue, and the officers of Government to whom the collection of the revenue in the different districts has been occasionally committed in consequence of the *zemindars* refusing to pay the revenue demanded of them, have availed themselves of the abovementioned rule of limitation, to make grants of extensive tracts of land to others, or in the names of their relations or dependants for their own use, dating the deeds for these alienations previous to the Company's accession to the *dewanny*, or procuring them to be registered in the *zemindaree* records, as having been alienated prior to that period. Others have made such alienations without antedating the grants, and left it to the grantee to maintain himself in possession by such means as circumstances might afford, in the event of his title being brought into question. The Governor-General in Council deeming it incumbent on him to recover the public dues thus alienated in opposition to the ancient and existing laws of the country, as well as to resume the revenue of all lands the grants for which might expire; and as the proprietors of estates were not entitled to collect such of the public dues, from the lands included in their estates, as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated by themselves and others, the amount, in both cases, being excluded from the assets on which the settlement was to be concluded; it was made a rule at the time of forming the Decennial Settlement, and which has been re-enacted by Section 36, Regulation VIII., 1793, that the *jumma* assessed upon the estates of individuals, was to be considered as "exclusive and independent of all existing *lakheraje* lands, whether exempted from the *lakheraje* or public revenue, with or without due authority;" and by the third clause of the seventh article of the proclamation contained in Regulation I., 1793, which specifies the conditions under which Government declared the Decennial Settlement permanent, it is expressly stipulated, "that the Governor-General in Council will impose such assessment as he may deem equitable on all lands at present alienated, and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles." The Governor-General in Council however, at the same time that he is desirous of recovering the public dues from lands which have been illegally alienated, is equally solicitous that persons holding such grants under titles that are declared valid, should be secured in the possession and enjoyment of their property. It is likewise his wish, that the recovery of the dues of Government from those lands which have been illegally alienated previous to the 1st December 1790, should be attended with as little distress as possible to the possessors; and to obviate all injustice, or extortion, in the enquiry



into the titles of persons holding exempted lands, he has further resolved, that the claims of the public on their lands (provided they register the grants as required in this regulation) shall be tried in the courts of judicature, that no such exempted lands may be subjected to the payment of revenue, until the titles of the proprietor shall have been adjudged invalid by a final judicial decree. Upon the above grounds, and with a view to facilitate the recovery of the public dues from lands held exempted under invalid grants, as well as to prevent any similar alienations being hereafter made, to the prejudice of the security of the public revenue which has been assessed in perpetuity upon the estate of individuals; and further, that Government and the officers employed in the collection of the public revenue may at all times have in their possession a correct register of the lands in the several *zillahs*, held exempt from the payment of revenue the following rules, containing the rules passed on the 1st December 1790, with modifications, have been enacted.

II. *First.* All grants for holding land exempt from the payment of revenue, made previous to the 12th August 1765, the date of the Company's accession to the *dewanny*, by whatever authority, and whether by a writing, or without a writing, shall be deemed valid, provided the grantee, actually and *bonâ fide* obtained possession of the land so granted previous to the date abovementioned, and the land shall not have been subsequently rendered subject to the payment of revenue, by the officers, or the orders of Government. If it shall be proved to the satisfaction of the Court, that the grantee did not obtain possession of the land so granted previous to the 12th August 1765, or that he did obtain possession of it prior to that date, but that it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

*Second.* In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previous to the date of the Company's accession to the *dewanny*, and of it being proved to the satisfaction of the court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an

officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the lands to the payment of revenue, the Court shall suspend its judgment, and report the circumstances to the Governor General in Council, to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue, and upon receiving the determination of the Governor-General in Council, the court is to decide

Claims to hold exempted from revenue, lands that have paid revenue for twelve years, not to be heard.

*Exception.*

For city Court, unless the claimant can show good and sufficient cause for not

accordingly. No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any *zillah*

having preferred the claim to a competent jurisdiction within the twelve years, and proceeded in it, as required by Section 14, Regulation III, 1793.\*

*Third.* But no part of the two preceding clauses is to be construed to empower the courts to adjudge any person, not being the original grantee, entitled to hold exempt from the payment of revenue, land now subject to the payment of revenue, under a grant made previous to the Company's accession to the *dewanny*, the writing for which may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life tenure only, according to the ancient usages of the country.

*Fourth.* Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue under a grant made previous to the *dewanny* to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the writing for such grant may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where from the nature and denomination of the grant, it shall be proved to be a life tenure only, according to the ancient usages of the country. Nor to entitle the heirs of persons now possessing exempted lands under life grants made previous to the *dewanny*, to hold such lands exempt from the payment of revenue upon the death of the present possessor.

Power reserved to the Governor General in Council, of determining whether life grants, to which one or more successions of whatever nature may have taken place prior to the date of the *Dewanny*, shall be subjected to the payment of revenue or not, on the death of the present possessor.

tion of it, is hereditary according to the ancient usages of the country. But upon the demise of the present possessor of any such grant, which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the date of the *dewanny*, the lands shall not be subjected to the payment of revenue under the decree, without the sanction of the Governor-General in Council, to whom a copy of the proceedings and decree of the court is to be transmitted, and to whom is reserved a power of declaring the

\* Section 14 of Regulation III of 1793 is as follows :—

The *zillah* and city courts are prohibited hearing, trying, or determining, the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August 1765 ; or any suit whatever against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it ; unless the complainant can shew, by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money ; or that he directly preferred his claim within that period for the matters in dispute, to a court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the court why he did not proceed in the suit ; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress.

lands subject to the payment of revenue or not, as may appear to him proper.

*Fifth.* The present possessors of lands now exempt from the payment of revenue, under such life grants made previous to the *dewanny*, and declared by the preceding clause not to be hereditary, are prohibited from selling, or otherwise transferring them, or mortgaging the revenue of them for a longer period than their own lives, and all such transfers and mortgages are

declared illegal and void. It is to be understood, however, that if any such life grants shall have been confirmed as hereditary tenures by Government, or by the officers of Government empowered so to confirm them, they are not to be liable to the payment of revenue on the death of the present possessor, and are to be

excepted from the other rules contained in this and the preceding clause. If doubts shall arise in any court as to the competency of the authority of any officer of Government to confirm any such life grant as hereditary, the court is to suspend its judgment, and report the circumstances to the Governor General in Council, to whom a power is reserved of determining finally whether such officer possessed competent authority to confirm the grant as hereditary or not; and the Court, upon receiving the determination of the Governor-General in Council, is to decide accordingly.

*III. First.* All grants for holding land exempt from the payment of revenue, which may have been made since the 12th August 1765, and previous to the 1st December 1790, corresponding with the 18th Aughun 1197 Bengal era, the 10th Aughun 1198 Fussily, the 18th Aughun 1198 Willaity, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

*Second.* If doubts shall be entertained by any court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the Governor General in Council, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise; and the court, upon receiving the determination of the Governor General in Council, shall decide accordingly.

*Third.* The rule contained in clause first, is not to be considered to extend to authorize the subjecting to the payment of revenue, land held exempt from the payment of it under grants, made previous to the commencement of the Bengal year 1178, or the Fussily or Willaity year 1179, (according as the land may be situated in Bengal, Behar, or Orissa,) under the signature of the chiefs of the late provincial councils, and the seals of those councils, agreeably to an authority vested in them by Government for granting land to be held exempt from

the payment of revenue, the annual produce of which did not exceed one hundred rupees.

*Fourth.* Nor to authorize the subjecting to the payment of revenue,

And also of lands not exceeding ten *beeghas* granted before the dates herein specified, which are appropriated to religious or charitable purposes.

any land, the grants for which, whether for the life of the grantee, or otherwise, were made previous to the commencement of the Bengal year 1178, or the Fussily or Willaity year 1179, (according as the land may be situated in Bengal, Behar or Orissa,) where the quantity of land granted shall not exceed ten *beeghas*, and the produce of it is *bond fide* appropriated as an endowment on temples, or to the maintenance of Brahmins, or other religious or charitable purposes. The rule in this clause is declared to extend also to all grants of land whatever, not exceeding ten *beeghas*, made previous to the *dewanny*, the produce of which may be now so appropriated.

IV. This regulation, as far as regards lands alienated previous to the 1st December 1790, respects only the question whether they are liable to the payment of revenue or otherwise.

Questions regarding the proprietary right in lands alienated before the 1st December 1790, and adjudged liable to the payment of revenue, to be determined in the *dewanny adawlut*, this regulation with respect to such lands relating only to the revenue,

Every dispute or claim regarding the proprietary right in lands alienated previous to that date, and which, in conformity to this regulation, may become subject to the payment of revenue, is to be considered as a matter of a private nature to be determined by the courts of *dewanny adawlut*, in the event of any dispute or claim arising respecting it, between the grantee and the grantor, or their respective heirs, or successors. The grantees, or the present possessors, until dispossessed by a decree of the *dewanny adawlut*, are to be considered as the proprietors of the lands, with the same right of the property therein as is declared to be vested in proprietors of estates or dependent *talooks*, (according as the land may exceed or be less than one hundred *beeghas*, as specified in Sections 6, 7, and 21.) subject to the payment of revenue, and they are to execute engagements for the revenue, with which their lands may be declared chargeable, either to Government, or to the proprietor, or farmer of the estate in which the lands may be situated, or to the officer of Government, (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer, or collected *khas*.) under the rules for the Decennial Settlement. If by the decision of the *dewanny adawlut* the proprietary right in the land shall be transferred, the person succeeding thereto, is in like manner to be responsible for the payment of the revenue assessed, or chargeable thereon.

By continuing the proprietary right in the land to the grantee or possessor in the cases specified in the preceding section, instead of dispossessing him of the land altogether, agreeably to former usage, and assessing the land in the mode prescribed in the two following sections, a liberal provision will be left to him. Where the grant may have been made before the Bengal year 1178, or the Fussily or Willaity year 1179, the proprietor will hold his land, as an estate paying a fixed revenue of only half the amount assessed on the *malguzaree* lands in the country; and where the grant may have been made subsequent to the abovementioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue under the rules for the Decennial Settlement as hereafter directed.

V. By continuing the proprietary right in the land to the grantee or possessor in the cases specified in the preceding section, instead of dispossessing him of the land altogether, agreeably to former usage, and assessing the land in the mode prescribed in the two following sections, a liberal provision will be left to him. Where the grant may have been made before the Bengal year 1178, or the Fussily or Willaity year 1179, the proprietor will hold his land, as an estate paying a fixed revenue of only half the amount assessed on the *malguzaree* lands in the country; and where the grant may have been made subsequent to the abovementioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue under the rules for the Decennial Settlement as hereafter directed.

# VI. The revenue assessable under section 9, on land not exceeding one

To whom the revenue assessed on lands not exceeding one hundred *beeghas*, alienated before the 1st December 1790, is to belong.

hundred *beeghas* of the measurement that may prevail in the *pergunnah*, wherein it may be situated, and whether lying in one village, or two, or more villages, and that may have been alienated by any one grant, made previous to the 1st December 1790, and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependent *talook* in which the land may be situated, notwithstanding any thing said in Section 8, Regulation I, 1793; and he shall not be liable to the payment of any additional revenue, on account of the assessment which may be chargeable on such lands, during the continuance of the engagement under which he may pay the revenue of such estate, or dependent *talook*, when the land may be so adjudged liable to the payment of revenue. If the estate or dependent *talook* shall be held *khas* when the lands are decreed liable to the payment of revenue, the amount is to be collected by, and paid to whomsoever the rents and revenue of the estate or *talook* may be payable, until a settlement shall be concluded for the revenue of it, either with the proprietor, or a farmer. The land which may be so adjudged subject to the payment of revenue, is to be considered as a dependent *talook*.

# VII. The revenue assessable under Section 8, on land exceeding one

The revenue assessable on lands exceeding one hundred *beeghas*, alienated prior to the 1st December 1790, declared to belong to Government.

hundred *beeghas* of the measurement that may prevail in the *pergunnah* wherein it may be situated, and whether lying in one village, or two or more villages, and alienated by any one grant made previous to the 1st December 1790, and which may be adjudged or become liable to the payment of revenue, is declared to belong to Government. The lands specified in this section which may be adjudged liable to the payment of revenue, are to be considered as independent *talooks*.

## REGULATION XXXVII OF 1793.

A REGULATION for re-enacting with Modifications, the Rules passed on the 23rd April 1788, and subsequent dates, for trying the Validity of the Titles of Persons holding, or claiming a right to hold, *Altumgah*, *Jaghire*, and other Lands, exempt from the Payment of public Revenue, under Grants termed *Badshahee* or *Royal* and for determining, when certain Grants of that Description shall be considered to have expired; and for fixing the Amount of the public Revenue to be assessed upon the Lands, the Grants for which may expire, or be adjudged invalid.—PASSED by the Governor General in Council on the 1st May 1793; corresponding with the 21st *Bysaak* 1200 *Bengal* era; the 6th *Bysaak* 1200 *Fussily*; the 21st *Bysaak* 1200 *Willaity*; the 6th *Bysaak* 1850 *Sumbut*; and the 19th *Romzaan* 1207 *Higeree*.

By the ancient law of the country, the ruling power is entitled to a

### Preamble.

certain proportion of the produce of every *beegha* of land, unless it transfers its right thereto for a term, or in perpetuity. As a necessary consequence of this law, every grant or alienation of Government's proportion of the produce of lands without its sanction, was considered null and void. Had the validity of such grants

or alienations been admitted, it is obvious that the public revenue would have been liable to gradual diminution. Under the native Government, grants were occasionally made of the Government's share of the produce of lands for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops, and for other services. The British Government continued to the grantees or their heirs, such of these grants as were hereditary, and were made before the date of the Company's accession the *dewanny*, provided the grantees or their heirs had obtained possession previous to that date; but those grants which were for life only, have been invariably considered as resumable on the death of the grantees. No complete register of these grants having been formed on the Company's accession to the *dewanny*, nor subsequent to that period, many persons have retained possession of lands under fabricated or antedated grants, or have succeeded, to life grants on the demise of the original grantee, or former possessor, without the sanction of Government. The Governor-General in Council, deeming it incumbent on him to resume the public dues from land held under invalid tenures, as well as the revenue of all lands the grants for which might expire, and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates, as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated or were appropriated without authority, the amount of the revenue of the lands having in both cases been excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by section 34, Regulation VIII, 1793, that the *jumma* assessed upon the estates of individuals, was to be considered "as exclusive and independent of all existing *lakheraje* lands, whether exempted from the *kheraje* or public revenue, with or without due authority;" and by the third clause of the seventh article of the proclamation contained in Regulation I, 1793, which specifies the conditions under which Government declared the decennial settlement permanent; it is expressly stipulated, "that the Governor-General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles." The Governor-General in Council, however, at the same time that he is desirous of recovering the public dues from lands held under invalid tenures, is equally solicitous that persons holding lands under grants that are declared valid, should be secured in the quiet possession and enjoyment of them. With this view, and to obviate all injustice, or extortion, in the enquiry into the titles of persons possessing lands under such grants, he has resolved that all claims of the public for the resumption of such grants, (provided the grantees or persons in possession register their grants as required in this regulation,) shall be tried in the court of judicature, that no such grants may be resumed until the title of the grantee or present possessor shall have been adjudged invalid by a final judicial decree. Upon the above grounds, and with a view to facilitate the resumption of invalid grants, as well as to prevent any grants being hereafter made without the authority of Government, and further, that Government and its officers may at all times have in their possession a correct register of the lands in the several *zillahs*, held exempt from the payment of revenue under *badshahee* grants, the following rules, containing the rules passed on the 23rd April 1788, and subsequent dates with modifications, have been enacted.

II. *First.*—*Altumgah Jaghire, ayma, mudud-maush*, or other *badshahee* grants, for holding land exempt from the payment

*Badshahee* grants made previous to the 12th August 1765, declared valid, provided the grantee obtained possession before that date, and has since held possession. shall be deemed valid, provided the grantee actually and *bonâ fide*, obtained possession of the land so granted previous to that date, and the grant shall not have been subsequently resumed by the officers or the orders of Government.

If it shall be proved to the satisfaction of the court, that the grantee did not obtain possession of the land so granted previous to the 12th August 1765, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

*Second.*—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a *badshahee* grant made previous to the date of the Company's accession to the *dewanny*, and on it being proved to the satisfaction of the court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to resume the grant and subject the lands to the payment of revenue, the court shall suspend its judgment, and report the circumstances to the Governor-General in Council, to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and upon receiving the determination of the Governor-General in Council, the court is to decide accordingly.

No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any *zillah* or city court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within the twelve years, and proceeded in it, as required by Section 14, Regulation III. 1793.\*

Claims to hold exempt from revenue under *badshahee* grants lands that have paid revenue for twelve years, not to be heard.

*Exception.*

*Third.*—But no part of the two preceding clauses, is to be construed to empower the courts to adjudge any person not being the original grantee, entitled to hold land paying revenue to Government, exempt from the payment of revenue, under a *jaghire* or other grant made previous to the Company's accession to the *dewanny*, where the grant may expressly specify it to have been given for

\* Repealed by Act VI of 1871.

the life of the grantee only, or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usages of the country.

*Fourth.*—Nor to entitle the heirs of any person now holding lands

Nor to entitle the heirs of persons now possessing exempted lands under life grants made previous to the *dewanny* to hold such lands exempt from the payment of revenue upon the death of the present possessor.

exempt from the payment of public revenue under a *jaghire* or other *badshahee* life-grant, made previous to the *dewanny*, to succeed to, and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the grant may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the grant, or the grant

not to be forthcoming, where from the nature and denomination of the grant it shall be proved to be a life-tenure only, according to the ancient usages of the country.

*Fifth.*—The present possessors of lands now exempt from the payment

The present possessors of such life grants prohibited from transferring them, or mortgaging the revenue of them beyond their own lives.

of the revenue under such *jaghire* or other life-grants, made previous to the *dewanny*, and declared by the preceding clause not to be hereditary, are prohibited from selling, or otherwise transferring them, or mortgaging the revenue of the lands for a longer period than their own lives, and all such

transfers and mortgages which have been or may be made, are declared illegal and void.

III. *First.*—All *badshahee* grants for holding land exempt from the

All grants made or confirmed since the *dewanny* excepting by the authority of Government, or its officers duly empowered, declared invalid.

payment of revenue, which may have been made since the 12th August 1765, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

*Second.*—If doubts shall be entertained by any Court as to the com-

Courts how to proceed in the event of their entertaining doubts of the authority of the officer to confirm the grant.

petency of the authority of any officer to confirm any such grant, the court is to suspend its judgment, and report the circumstances of the case to the Governor-General in Council, to whom a power is reserved of determining finally whether the officer

possessed competent authority to confirm the grant, or otherwise; and the court, upon receiving determination of the Governor-General in Council, shall decide accordingly.

IV. It is to be understood that this Regulation respects only the

Questions regarding the proprietary right in lands included in grants, to be determined in the *dewanny adawlut*.

Government proportion of the revenue arising from lands held or claimed to be held under *badshahee* grants, and whether Government is entitled to resume or retain such revenue or otherwise. Every dispute or claim regarding the *zemindaree* or pro-

prietary right in lands included in any grant, is to be considered as a matter of a private nature between the contending parties, and is to be determined in the *dewanny adawlut*.



V. When a *jaghire* or other life-grant shall escheat to Government;

Collectors to attach the revenue of lands in escheated grants.

the Collector is immediately to attach the revenue of the lands, and report the circumstance to the Board of Revenue, who are to obtain the orders of the Governor-General in Council, regarding the resumption of the grant.

VI. When any *badshahee* grant shall be resumed or expire, or escheat

Lands included in resumed grants to be assessed, and the revenue to be paid by the proprietor, according to the regulations for the decennial settlement.

to Government, the revenue to be paid to Government from the land included in it shall be assessed, and the settlement made in perpetuity, agreeably to the rules for the decennial settlement contained in Regulation VIII, 1793, with the person possessing the *zemindaree* or proprietary right in the lands, whoever he may be. If the proprietor shall refuse to pay the *jumma* demanded of him, the land shall be held *khask* or let in farm, as directed in that Regulation.

VII, VIII, IX.—Repealed by Regulation II of 1819.

X. Any person having a claim to hold lands paying revenue, exempt

Persons claiming to hold lands paying revenue, exempt from revenue under *badshahee* grants, to sue Government.

from the payment of revenue under a *badshahee* grant, must institute his claim against Government, who alone can be the defendant in such suits, in the *dewanny adawlut* of the *zillah*, in the same manner as in cases where individuals may claim a right to hold lands, paying revenue, exempt from the payment of revenue under grants not of the description of those termed *badshahee*, in virtue of Regulation XIX, 1793. The Collectors of the Revenue are to defend all

Collector to defend the suit.

such suits as may be instituted against Government, and such suits, and the suits which the Board of Revenue may direct the Collector to institute, are to be defended or prosecuted by the *vakeel* of Government, under the instructions of the Collector; and in the event of Government being cast, either wholly or in part, or, if the Collector shall be dissatisfied with the decree in any respect, all the

*Vakeel* of Government to defend or prosecute suits instituted against, or by Government.

Rules to be observed by the collector in the event of Government being cast wholly, or in part.

rules contained in section 30, Regulation XIV, 1793, and the other sections in that Regulation, respecting decisions given against a Collector in any *zillah* court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal from the decision of the *zillah* court to be preferred to the *Sudder Dewanny Adawlut* they are to report their reasons for not preferring the appeal to the Governor-General in Council, who will direct the cause to be appealed or not in either case as may appear to him proper.

XI.—Repealed by Regulation II of 1819.

XII. If it shall appear to any court of judicature, during the course

Grants forged or altered in any respect, or antedated, declared void.

of a trial, that a grant has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination, or the

terms of the tenure in the original grant, have been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void.

XIII.—Repealed by Act XVI. of 1874.

XIV.—Repealed by Regulation II. of 1819.

XV. *Altumgha, ayma, and muddudmaush* grants, are to be considered as hereditary tenures. These and other grants, which certain grants are to be transferable, which from the terms or nature of them may be hereditary, and are declared valid by this regulation, or which have been or may be confirmed by the British Government, or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise, and all persons succeeding to such grants whatever mode, are required to register their names in the office of the collector, within six months after they may succeed to the grant. But all such purchases are to be considered as made at the risk of the purchaser; and in the event of the grant not proving to be hereditary, or not have been made or confirmed by the British Government, or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

*Jaghires* to be considered as life tenures, unless the grant shall express otherwise. *Jaghires* are to be considered as life-tenures only, and with all other life-tenures, are to expire with the life of the grantee, unless otherwise expressed in the grant.

## REGULATION VIII OF 1819.

A REGULATION to declare the Validity of certain Tenures, and to define the relative Rights of Zemindars and Putnee Talookdars; also to establish a Process for the Sale of such Talooks in satisfaction of the Zemindar's Demand of Rent; and to explain and modify other parts of the system established for the Collection of Rents generally throughout Bengal.—PASSED by the Governor General in Council, on the 3rd September 1819; corresponding with the 15th Bhadoon 1226 Bengal era; the 29th Bhadoon 1226 Fussily; the 20th Bhadoon 1227 Willaity; the 14th Bhadoon 1876 Sumbut; and the 12th Zekaad 1234 Higeree.

I. By the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different *mohauls*, were declared to be entitled to make any arrangements for the leasing of their lands in *talook* or otherwise, that they might deem most conducive to their interests. By the rules of Regulation XLIV, 1793, however, all such arrangements were subjected to two limitations: first, that the *jumma*, or rent, should not be fixed for a period exceeding ten years; and secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale. The provisions of Section 2, Regulation XLIV. 1793, by which

the period of all fixed engagements for rent was limited to ten years, have been rescinded by Section 2, Regulation V. 1812, and in Regulation XVIII. of the same year it is more distinctly declared, that *zemindars* are at liberty to grant *talooks* or other leases of their lands, fixing the rent in perpetuity at their discretion: subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue, in the same manner as heretofore. In practice the grant of *talooks* and other leases at a rent fixed in perpetuity had been common with the *zemindars* of Bengal for some time before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V. and XVIII. of 1812, or in any other regulation, whether tenures at the time in existence, and held under covenants or engagements entered into by the parties in violation of the rule of Section 2, Regulation XLIV. 1793, should, if called in question, be deemed invalid and void as heretofore.—This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force. Furthermore, in the exercise of the privilege thus conceded to *zemindars* under direct engagements, with Government there has been created a tenure which had its origin on the estates of the Raja of Burdwan, but has since been extended to other *zemindarees*; —the character of which tenure is, that it is a *talook* created by the *zemindar*, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever: the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the *zemindar's* discretion; but even if the original tenant be excused, still in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the *zemindar*; by the terms also of the engagements interchanged, it is amongst other stipulations provided, that, in case of an arrear occurring, the tenure may be brought to sale by the *zemindar*, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated *putnee talooks*, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *durputnee talookdars*; these again sometimes similarly underlet to *seputneedars*, and the conditions of all the title deeds vary in nothing material from the original engagements executed by the first holder. In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether in case the proceeds of sale should exceed the *zemindar's* demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied, or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner. The tenures in question have extended through

several *zillahs* of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the courts of civil judicature in regard to them, have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *putnee talook* as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by *putneedars* and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the *zemindar*, or other, for his ruin, as well as to secure the just rights of the *zemindar* on the sale of any tenure under the stipulations of the original engagements entered into with him. It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale; and whereas the estates of *zemindars* under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue, payable by monthly *kists* to Government, it has seemed just to allow any *zemindar* who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the regulations in force: it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid, at the close of the Bengal year. It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters. The following rules have accordingly been enacted by His Excellency the Most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Midnapore. . . .

## II. It is hereby declared that any leases or engagements for the fixing

Leases fixing rent in perpetuity, or for a longer term than ten years, declared valid, though executed while Section 2, Regulation XLIV. 1793, was in force.

of rent now in existence, that may have been granted or concluded for a term of years, or in perpetuity, by a proprietor under engagements with Government or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V. 1812, and while the rule of Section 2, Regulation XLIV. 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question:—provided however that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, unless specially exempted from such liability by the rule in question, or by any other specific rule of the regulations in force.

### III. *First.* The tenures known by the name of *putnee talooks*, as de-

*Putnee* tenures declared valid, transferable, and answerable for debt. scribed in the preamble to this regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared, that they are capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the courts of judicature, in the same manner as other real property.

### *Second.* *Putnee talookdars* are hereby declared to possess the right of

*Putneedar's* right of underletting, declared. letting out the lands composing their *talooks* in any manner they may deem most conducive to their interest, and any engagements so entered into by such *talookdars* with others shall be legal and binding between the parties to the same, their heirs, and assignees:—provided, however, that no such engagements shall operate to the prejudice of the right of the *zemindar* to hold the superior tenure, answerable for any arrears of his rent, in the estate in which he granted it, and free of all encumbrance resulting from the act of his tenant.

### *Third.* In case of an arrear occurring upon any tenure of the descrip-

*Putnee* tenures declared not voidable for arrears. tion alluded to in the first clause of this section, it shall not be liable to be cancelled for the same; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due;—subject however to the provisions contained in Section 17 of this regulation.

### IV. If the holder of a *putnee talook* shall have underlet in such manner

Inferior tenures held under similar title deeds will be deemed to confer a similar interest to that provided for *putnee talooks* in Section 3.

as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to *putnee talooks*, in so far as concern the grantor of such under-tenure. The same construction shall also hold in the case of *putnee talooks* of the third or fourth degree.

### V. The right of alienation having been declared to vest in the holder

*Zemindar* not entitled to refuse to give effect to a transfer.

of a *putnee talook*, it shall not be competent to the *zemindar* or other superior, to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee. In conformity however with established usage, the *zemindar*, or other superior shall be entitled to exact a fee upon every such alienation, and the rate of the said fee is hereby fixed at two percent. on the *jumma* or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account. The *zemindar* shall also be entitled to demand

But may demand his fee.

Fee fixed at two per cent. on the *jumma*.

But the maximum one hundred rupees.

May also demand security, as far as half the *jumma*.

substantial security from the transferee or purchaser, to the amount of half the *jumma* or yearly rent, payable to him from the tenure transferred; the

condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of court, as to all other alienations; but it shall not apply to the case of sale for an arrear in the rent due to the *zemindar* or other superior, under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.

VI. It shall be competent to the *zemindar* or other superior to refuse the registry of any transfer, until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted:— provided however, that if the security tendered by any purchaser or transferee, should not be approved by the *zemindar* and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the civil court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the *zemindar* to accept it, and give effect to the transfer without delay. It is hereby provided, that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a *putnee talook*, nor to any alienation other than of the entire interest; for no apportionment of the *zemindar's* reserved rent can be allowed to stand good, unless made under his special sanction.

VII. In case of the sale of a *putnee* tenure in execution of a judgment of court, if the purchaser do not within the period of one month from the sale conform to the rules of Section 5 of this regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the *zemindar* or other superior shall be entitled, of his own authority, to send a *sezawul* to attach and hold possession of the tenure, until the forms prescribed be observed. In case also of the sale of a *putnee* tenure for arrears of the rent due upon it, under the rules of this regulation, if security be required by the *zemindar*, and the purchaser fail to furnish the same within one month of the date of sale, the *zemindar* shall similarly be entitled to send a *sezawul* to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given. Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers; consequently after deducting the rent due and the expence of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser: but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the *zemindar* or other superior making the attachment shall be received as *prima facie* evidence to warrant process for an arrear so accruing.

VIII. *First.*—*Zemindars*, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures, upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the regulations in force.

*Second.*—On the first day of Bysaak, that is, at the commencement of the following year from that of which the rent is due, the *zemindar* shall present a petition to the collector,\* containing a specification of any balances

that may be due to

Notice to be published that it will take place on the first of Jyte.

him on account of the expired year from all or any *talookdars* or other holders of an interest of the nature described in the preceding clause of this section. The same shall then be stuck up in some conspicuous part of the *cutcherree*, with a notice, that if the amount claimed be not paid before the first of Jyte following, the tenures of the defaulters will, on that day be sold by public sale in liquidation. Should however the first of Jyte fall on a Sunday, or holidays, the next subsequent day, not a holiday, shall be selected instead: a similar notice shall be stuck up at the *sudder cutcherree* of the *zemindar* himself, and a copy or extract of such part of the notice as may apply to the individual case, shall be by him sent, to be similarly published at the *cutcherree*, or at the principle town or village upon land of the defaulter. The *zemindar* shall be exclusively

Notice to be sent into the *mofussil*.

Rules for serving it,

answerable for the observance of the forms above prescribed, and the notice required to be sent into the *mofussil* shall be served by a single *peon*, who shall bring back the receipt of the defaulter, or of his manager for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear, from the tenor of the receipt or attestation in question, that the notice has been published at any time previous to the fifteenth of the month of Bysaak, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign thier names in attestation, the *peon* shall go to the *cutcherree* of the nearest *moonsiff*, or if there shall be no *moonsiff*, to the nearest *thana*, and there make voluntary oath of the same having been duly published—certificate to which effect shall be signed and sealed by the said officers, and delivered to the *peon*.

*Third.*—On the first day of Kartic in the middle of the year, the *zemindar* shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of

Mid year sale to be applied for on the first of Kartic.

**Aughun**, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartic to less than one-fourth, or a four-anna proportion of the total demand of the *zemindar*, according to the *kistbundee*, calculated from the commencement of the year to the last day of Kartic.

Notice as above for sale the first of Aughun.

If arrear be not less than one-fourth of demand.

**IX.** All sales of saleable tenures applied for under the rules of this regulation, shall be made in public *cutcherree* by the Collector;\* the land shall be sold to the highest bidder, and every one not the actual defaulter, shall

Register to conduct the sale.

be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter : fifteen per cent.

Rules for bidding, &c.

Fifteen per cent. to be paid on sale.

required to be deposited is in hand for the purpose, or will be produced within

On lot to be re-sold after two hours.

two hours. If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the *bazar* of the *sudder* station of the *zillah*, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, (such† forfeited deposit shall be applied to defray the expences of the sale, and the surplus shall be forfeited to Government) and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one ; such deficiency to be levied by the process for the execution of decrees of the civil courts.

Failing remainder, re-sale on ninth day after.

**X.** At the time of the sale the notice previously stuck up in the *cutcherree* shall be taken down, and the lots be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the *zemindar* with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the *mofussil*; nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate *roobukaree*, to be held upon each lot sold. If the sale be of the description

Forms to be observed on selling.

*Zemindar* to certify balance.

And service of notice in *mofussil*.

of the sale the notice previously stuck up in the *cutcherree* shall be taken down, and the lots be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the *zemindar* with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the *mofussil*; nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate *roobukaree*, to be held upon each lot sold. If the sale be of the description

\* Section 3, Act 8 of 1865, B. C.

† Section 2, Act 25 of 1850.

If the lands comprising the Putny are situate in two or more Collectorates, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale, section 1, Act 6 of 1853.



provided for in the third clause of Section 8 of this regulation, the *kist-bundee* of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four anna proportion of the demand up to the date of sale, nor shall the sale take place unless this be ascertained. The *zemindar* shall be exclusively responsible for the

On his own responsibility. correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this regulation.

**XI. First.**—It is hereby declared, that any *talook* or saleable tenure that may be disposed of at public sale, under the Tenure to be sold free of incumbrance by act of defaulter. rules of this regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives, or assignees; unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said *talook* may have been held. No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the *zemindar* to hold the tenure of his creation answerable in the state in which he created it, for the rent, which is in fact his reserved property in the tenure: except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such *zemindar*.

**Second.**—In like manner, on sale of a *talook* for arrears, all leases No under-lease to stand after sale. originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the *ryots*; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

**Third.**—Provided nevertheless, that nothing herein contained shall Exception in favour of *bonâ fide* engagements with *ryots*. be construed to entitle the purchaser of a *talook* or other saleable tenure intermediate between *zemindar* and actual cultivators, to eject a *khodkast ryot*, or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with such tenants by the late incumbent, or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

**XII.** The rules of the preceding section being declaratory of the Above rule to take effect retrospectively. principle to be observed on all occasions, wherein saleable tenures are made responsible for the *zemindar's* reserved rent, will equally apply to the case of *talooks* heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it, shall have been that recognized and in use in the district at the time of selling. Nothing however herein contained shall operate to the prejudice of any Proviso. agreement, express or implied, now subsisting

between the purchaser of a *talook* and the lessees of his predecessor. Neither

But not to apply to shall the rule for the fall of under-tenures be considered to apply to any private transfer by a *talookdar* of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the *talookdar* in favour of the *zemindar*, nor to any act originating with the former holder, other than default as aforesaid; all such operations involve only a transfer of the tenure in the estate in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

**XIII. First.**—With reference to the injury that may be brought upon

Reason for allowing under-tenants a means of staying sale. the holder of a *talook* of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the *zemindar*, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such *talookdars* the means of saving their tenures from the ruin that must attend such a sale, and the following rules have accordingly been enacted for this purpose.

**Second.**—Whenever the tenure of a *talookdar* of the first degree may

Manner of doing so. be advertised for sale in the manner required by the second and third clauses of Section 8 of this regulation, for arrears of rent due to the *zemindar*, the *talookdars* of the second degree, or any number of them, shall be entitled By lodging the advertised balance, to stay the final sale, by paying into court the amount of balance that may be declared due by the person attending on the part of the *zemindar* on the day appointed for sale: in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale; and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the *zemindar* the amount of his demand any excess shall be paid back to the person or persons who may have lodged it.

**Third.**—If the amount so lodged shall be rent due by the inferior

In case of rent due being lodged. *talookdar* to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be hereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

**Fourth.**—If the person or persons making such a deposit, in order to

In case of advance from private funds. stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the *talook* so preserved shall be the security to the person or persons making the advance, who shall be considered to have

and then thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons, who by making the advance may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum, up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.

Defaulter how to recover possession.

been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.

XIV. *First*.—Should the balance claimed by a *zemindar* on account of the rent of any under-tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve in the manner provided for in sections 9 and 10 of this regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged. It shall however be competent to any party desirous of contesting the right of the *zemindar* to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the *zemindar* for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the court shall be careful to indemnify him against all loss, at the charge of the *zemindar* or person at whose suit the sale may have been made.

But action to lie for its reversal.

*Second*.—In cases also in which a *talookdar* may contest the *zemindar's* demand of any arrear, as specified in the notice advertised, such *talookdar* shall be competent to apply for summary investigation, at any time within the period of notice; the *zemindar* shall then be called upon to furnish his *cabooleat* and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale. Such award, if so made, will of course, regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the *zemindar* or his agent in attendance insist on the demand, the sale shall be made on his responsibility; nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash or in Government securities or in notes of the Bank of Bengal, by the *talookdar* contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for reversal of the sale.

But not to stay sale without deposit.

Summary investigation may be applied for by defaulter.

XV. *First*.—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser, at any sale made under this regulation, such purchaser shall receive from the officers conducting the sale, a certificate of such payment. The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *cutcherries* of the *zemindar*, and upon furnishing security, if required, to the extent of half

Rules for purchasers obtaining possession.

*Zemindar* to give transfer on security being furnished, if required.

the *jumma* or annual rent, he shall receive the usual *umuldustuk*, or order for possession, together with the notice to the *ryots* and others to attend and pay their rents henceforward to him. The *zemindar* shall also be bound to furnish access to any papers connected with the tenure purchased, that may be forthcoming in his *cutcherree*; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished,

or tendered, on requisition, the new purchaser shall be entitled to apply direct to the court, and he shall receive the orders for possession, and shall be put in possession of the lands by means of the *nazir*, in the same manner as possession is obtained under a decree of court: provided however, that if the delay be on account of the *zemindar's* contesting the sufficiency of the security tendered, the rule contained in Section 6 of this regulation shall be observed.

Remedy in case of delay.

Proviso.

*Second.*—When the new purchaser, shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the civil court, for the aid of the public officers in obtaining possession of his just rights. A proclamation shall then issue, under the seal of the court and signature of the judge, declaring, that the new incumbent having, by purchase at a sale for arrears of rent due to the *zemindar*, acquired the entire rights and privileges attaching to the tenure of the late *talookdar*, in the estate in which it was originally derived by him from the *zemindar*, he alone will be recognized as entitled to make the *zemindaree* collections in the *mofussil*, and no payments made to any other individual will on any account be credited to the *ryots* or others in any suit, for rent, or on any other occasion whatever, when the same may be pleaded.

*Third.*—Should the late incumbent, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers, and of all other public officers who may be at hand, and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

XVI.—Repealed by Act VIII. of 1865, B. C.

Rules for disposing of the purchase money of sales for arrears under this regulation.

XVII. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this regulation.

*Second.*—One per

One per cent. to be carried to the account of Government.

cent. shall first be deducted from the net proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain, for carrying into effect the provisions of this regulation.

sary to maintain, for carrying into effect the provisions of this regulation.

**Third.**—The balance on account of which the sale may have been made shall next be made good in full (with interest and expenses to be next made all charges incurred in bringing the *talook* to sale) to the *zemindar* or other person to whom the same may be due: provided however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the *zemindar* shall have omitted to avail himself of the process within his reach, for having them satisfied at the time, will have become in fact mere personal debts of the individual *talookdar*, and must be recovered in the same way as other debts by a regular suit in the court.

**Fourth.**—Any excess that may remain after satisfying the demand of the *zemindar*, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit, to answer the claims of the *talookdars* of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the *talook* sold, or on any part of it.

**Fifth.**—It shall be competent to any one conceiving himself to possess such an interest, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale. If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one the court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

**Sixth.**—Provided, however, that no *talookdar* of the second degree, or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior *talook*, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

**Seventh.**—Should no claims upon the purchase-money of a *talook* sold as above, be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal to the entire deposit, the defaulter whose tenure may have been sold

shall be at liberty to petition the court for the amount so held in deposit or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the court, declaring the amount adjudged to them out of the deposit, and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

*Eighth.*—It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit, such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

XVII and XIX.—Repealed by Sec. 1, Act X of 1859.

## REGULATION XI OF 1825.\*

**A REGULATION for declaring the Rules to be observed in determining Claims to Lands gained by Alluvion, or by Dereliction of a River, or the Sea.**—PASSED by the Governor General in Council, on the 26th May 1825; corresponding with the 14th Jeyte 1232 Bengal era; the 24th Jeyte 1232 Fussily; the 15th Jeyte 1232 Willaity; the 9th Jeyte 1882 Sumbut; and the 17th Sawaul 1240 Higeree.

**I.** In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the provinces immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, *churs*, or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side; whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side; similar instances of alluvion, encroachment, and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal. The lands gained from the rivers or sea by the means above-mentioned, are a frequent source of contention and affray, and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Court of Justice have sometimes found it difficult to determine the rights of litigant parties claiming *churs* or other lands gained in the manner above described. The Court of Sudder Dewanny Adawlut, with a view to ascertain the legal provisions of the Mahammedan and Hindoo laws on this subject, called for reports from their law-officers of each persuasion, and on consideration of the reports furnished by the law-officers in consequence, as well as of the decisions which have been passed by the Court of Sudder Dewanny Adawlut in cases brought before them in appeal which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor-General in Council has deemed

\* See Sec. 7, Act IX of 1847 and Sec. 2, Act XXXI of 1855.

it proper to enact the following rules for the general information of individuals, as well as for the guidance of the Courts of Judicature; to be in force, as soon as promulgated, throughout the whole of the provinces subject to the Presidency of Fort William.

## II. Whenever any clear and definite usage of *shekust pywust*, respecting the disjunction and junction of land, by the

Claims and disputes relative to alluvial lands to be decided by immemorial and definite usage, when such shall be clearly recognized and established,

encroachment or recess of a river, may have been immemorially established, for determining the rights of the proprietors of two or more contiguous estates divided by a river, (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side, and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land, between the parties whose estates may be liable to such usage.

## III. Where there may be no local usage of the nature, referred to in

Where no such local usage may be established, the cases to be decided by the rules declared in the following sections.

the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes, relative to lands gained by alluvion or by dereliction either of a river or the sea.

## IV. *First*.—When land may be gained by gradual accession, whether

Lands gained by gradual accession from the recess of a river or the sea, to be considered an increment to the tenure of the person to whose estate it may be annexed,  
Proviso.

from the recess of a river, or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government, by a *zemindar* or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever. Provided that

the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it, from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819, or of any other Regulation in force. Nor, if annexed to a subordinate tenure, held under a superior landholder, shall the under-tenant, whether a *khodkast ryot*, holding a *mouroosee istemraree* tenure at a fixed rate of rent per *beegha*, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

## *Second*.—The above rule shall not be considered applicable to cases in

When a river by a sudden change of its course may break through and intersect an estate, the lands so separated, being clearly recognized, shall remain the property of the original owner.

which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may, by the violence of stream separate a considerable piece of land from one estate, and join it to another estate, without destroying the identity, and preventing the recognition of the land so removed. In such cases the land, on being clearly recognized, shall remain the property of its original owner.

*Third.*—When a *chur* or island may be thrown up in a large navigable

*Churs* or islands thrown up in a large and navigable river, (the channel between the islands and the shore not being fordable,) to be at the disposal of Government.

But if fordable, to whom they shall belong.

river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea, between such island and the shore, may not be fordable, it shall, according to established usage, be at the disposal of Government. But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land tenure or tenures of

the person or persons, whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession.

*Fourth.*—In small and shallow rivers, the beds of which, with the *julker* right of fishery, may have been heretofore

Claims to *churs*, &c., &c. thrown up in small and shallow rivers how to be determined.

recognized as the property of individuals, any sand-bank or *chur* that may be thrown up, shall, as hitherto, belong to the proprietor of the bed of

the river, subject to the provisions stated in the first clause of the present section.

*Fifth.*—In all other cases, viz., in all cases of claims and disputes res-

Disputes relative to lands gained by alluvion or by dereliction of a river or the sea, not provided for by the provisions of the present regulation, how to be adjusted.

pecting land gained by alluvion, or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation; the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local

usage, if there be any applicable to the case, or if not, by general principles of equity and justice.

V. Nothing in this Regulation shall be construed to justify any en-

Encroachments on beds of navigable rivers and other obstructions to their free navigation prohibited.

croachments by individuals on the beds or channels of navigable rivers, or to prevent the *zillah* and City Magistrates or any other officers of Government who may be duly empowered for that purpose, from

removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall, in any respect, obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.





# ACT NO. VIII. OF 1890.

## THE GUARDIANS AND WARDS ACT, 1890.

### CONTENTS.

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#### CHAPTER I.

##### PRELIMINARY.

##### SECTIONS.

1. Title, extent and commencement.
2. Repeal.
3. Saving of jurisdiction of Courts of Wards and Chartered High Courts.
4. Definitions.

---

#### CHAPTER II.

##### APPOINTMENT AND DECLARATION OF GUARDIANS.

5. Power of parents to appoint in case of European British subjects.
6. Saving of power to appoint in other cases.
7. Power of the Court to make order as to guardianship.
8. Persons entitled to apply for order.
9. Court having jurisdiction to entertain application.
10. Form of application.
11. Procedure on admission of application.
12. Power to make interlocutory order for production of minor and interim protection of person and property.
13. Hearing of evidence before making of order.
14. Simultaneous proceedings in different Courts.
15. Appointment or declaration of several guardians.
16. Appointment or declaration of guardian for property beyond jurisdiction of the Court.
17. Matters to be considered by the Court in appointing guardian.
18. Appointment or declaration of Collector in virtue of office.
19. Guardian not to be appointed by the Court in certain cases.

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#### CHAPTER III.

##### DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

##### *General.*

20. Fiduciary relation of guardian to ward.
21. Capacity of minors to act as guardians.
22. Remuneration of guardian.
23. Control of Collector as guardian.

*Guardian of the Person.*

SECTIONS.

24. Duties of guardian of the person.
25. Title of guardian to custody of ward.
26. Removal of ward from jurisdiction.

*Guardian of Property.*

27. Duties of guardian of property.
28. Powers of testamentary guardian.
29. Limitation of powers of guardian of property appointed or declared by the Court.
30. Voidability of transfers made in contravention of section 28 or section 29.
31. Practice with respect to permitting transfers under section 29.
32. Variation of powers of guardian of property appointed or declared by the Court.
33. Right of Guardian so appointed or declared to apply to the Court for opinion in management of property of ward.
34. Obligations on guardian of property appointed or declared by the Court.
35. Suit against guardian where administration-bond was taken.
36. Suit against guardian where administration-bond was not taken.
37. General liability of guardian as trustee.

*Termination of Guardianship.*

38. Right of survivorship among joint guardians.
39. Removal of guardian.
40. Discharge of guardian.
41. Cessation of authority of guardian.
42. Appointment of successor to guardian dead, discharged or removed.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.
44. Penalty for removal of ward from jurisdiction.
45. Penalty for contumacy.
46. Reports by Collectors and Subordinate Courts.
47. Orders appealable.
48. Finality of other orders.
49. Costs.
50. Power of High Court to make rules.
51. Applicability of Act to guardians already appointed by Court.
52. Amendment of Indian Majority Act.
53. Amendment of Chapter XXXI of the Code of Civil Procedure.

**ACT No. VIII OF 1890.**  
**THE GUARDIANS AND WARDS ACT, 1890.**

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the Assent of the Governor General on the 21st March 1890.)*

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward ; It is hereby enacted as follows:—

**CHAPTER I.**

**PRELIMINARY.**

Title, extent and commencement. 1. (1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of British India, inclusive of Upper Burma and British Baluchistan ; and

(3) It shall come into force on the first day of July, 1890.

Repeal. 2. (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments, shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act ; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council ; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, Chapter 104 (*an Act for establishing High Courts of Judicature in India.*)

Definitions. 4. In this Act, unless there is something repugnant in the subject or context,—

(1) “minor” means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority :

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property :

(3) "ward" means a minor for whose person or property, or both, there is a guardian :

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure, and includes a High Court in the exercise of its ordinary original civil jurisdiction :

(5) "the Court" means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides :

(6) "Collector," means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons for all or any of the purposes of this Act :

(7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, 1882, and includes any Christian of European descent : and

(8) "prescribed" means prescribed by rules made by the High Court under this Act.

## CHAPTER II.

### APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

Power of parents to appoint in a case of European British subjects.

(a) by the father of the minor, or,

(b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Saving of power to appoint in other cases.

Power of the Court to make order as to guardianship.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Persons entitled to apply for order.

8. An order shall not be made under the last foregoing section except on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

(b) any relative or friend of the minor, or

(c) the Collector of the District or other local area within which the minor ordinarily resides or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

Court having jurisdiction to entertain application

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) In an application with respect to the guardianship of the property of a minor made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint, and stating, so far as can be ascertained,—

Form of application.

• • •

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian ;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims ;

(k) the causes which have led to the making of the application ; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

3) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

4) The application must be accompanied by a declaration of the fitness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

5) (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

to be served on admission of the application.

(2) to be served in the manner directed in the Code of Civil Procedure on—

(i) the parents of the minor if they are residing in British India,

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given ; and

(5) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

6) The Local Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1) is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

7) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

power to make interim order for production of minor and in-charge protection of person or property.

(2) If the minor is a female who ought not to be compelled to appear before the Court in pursuance of the direction under sub-section (1) for her production shall require to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(4) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Hearing of evidence before making of order.

14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

Simultaneous proceedings in different Courts.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(3) In any other case in which proceedings are stayed under sub-section (1) the Courts shall report the case through the Local Government to the Governor General in Council, and the Governor General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property or both, the Court may, if it thinks fit, appoint or declare them.

Appointment or declaration of several guardians.

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has, by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

17. (1) In appointing or declaring the guardian of a minor the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

Matters to be considered by the Court in appointing guardian.



(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but, other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(b) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

### CHAPTER III.

#### DUTIES, RIGHT AND LIABILITIES OF GUARDIANS.

##### *General.*

20. (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

21. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the Local Government or of such authority as that Government, by notification in the official Gazette, appoints in this behalf.

*Guardian of the Person.*

24. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Court unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

*Guardian of Property.*

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court—

Limitation of powers of guardian of property appointed or declared by the Court.

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Voidability of transfers made in contravention of section 28 or section 29.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

Practice with respect to permitting transfers under section 29.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

(a) that a sale shall not be completed without the sanction of the Court,

(b) that a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject,

Variation of powers of guardian of property appointed or declared by the Court.

33. (1) A guardian appointed or declared by the Court may apply by

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court consider the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Obligations on guardian of property appointed or declared by the Court.

34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward ;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement and of the debts due on that date or from the ward ;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs ;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs ; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

35. Where a guardian appointed or declared by the Court has given

Suit against guardian where administration-bond was taken.

a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied

that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.

36. (1) Where a guardian appointed or declared by the Court has not

Suit against guardian where administration-bond was not taken.

given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and

upon such terms as aforesaid, institute a suit against the guardian, or, in case

of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit as trustee for the ward, such amount as may be found to be payable by the guardian or his representative as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

### *Termination of Guardianship.*

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :—

- (a) for abuse of his trust ;
- (b) for continued failure to perform the duties of his trust ;
- (c) for incapacity to perform the duties of his trust ;
- (d) for ill-treatment, or neglect to take proper care, of his ward ;
- (e) for contumacious disregard of any provision of this Act or of any order of the Court ;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;
- (g) for having an interest adverse to the faithful performance of his duties ;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court ;
- (i) in the case of a guardian of the property, bankruptcy or insolvency ;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject ;

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

(a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Collector and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

**41. (1)** The powers of a guardian of the person cease—  
Cessation of authority of guardian.

- (a) by his death, removal or discharge ;
- (b) by the Court of Wards assuming superintendence of the person of the ward ;
- (c) by the ward ceasing to be a minor ;
- (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit ; or,
- (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

**(2)** The powers of a guardian of the property cease—

- (a) by his death, removal or discharge ;
- (b) by the Court of Wards assuming superintendence of the property of the ward ; or

(c) by the ward ceasing to be a minor.

**(3)** When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

**(4)** When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

**42.** When a guardian appointed or declared by the Court is discharged,

Appointment of successor to guardian dead, discharged or removed.

or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

. . .

## CHAPTER IV.

### SUPPLEMENTAL PROVISIONS.

**43. (1)** The Court may, on the application of any person interested

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

**(2)** Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

**(3)** Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for contumacy. 45. (1) In the following cases, namely :—

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.

Orders appealable.

47. An appeal shall lie to the High Court from an order made by a District Court,—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian ; or,
- (b) under section 9, sub-section (3), returning an application ; or,
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian ; or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or,
- (e) under section 28, or section 29, refusing permission to a guardian to do an act referred to in the section ; or,
- (f) under section 32, defining, restricting or extending the powers of a guardian ; or,
- (g) under section 39, removing a guardian ; or
- (h) under section 40, refusing to discharge a guardian ; or,
- (i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order ; or,
- (j) under section 44 or section 45, imposing a penalty.

48. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had—

50. (I) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act—

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts ;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted ;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29 ;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made ;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians ;

(f) as to the inspection of those statements and accounts by persons interested ;

(g) as to the custody of money, and securities for money, belonging to wards ;

(h) as to the securities on which money belonging to wards may be invested ;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,



(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (i) of sub-section (I) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

51. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. In section 3 of the Indian Majority Act, 1875, for the words "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely,—

"every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age."

Amendment of Chapter XXXI of the Code of Civil Procedure.

53. Chapter XXXI of the Code of Civil Procedure shall be amended as follows, namely :—

A.—To section 440 of the said Code the following shall be added, namely :—

"If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so."

B.—To section 443 of the said Code the following shall be added, namely :—

"Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed."

C.—After section 446 of the said Code the following shall be added, namely :—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

D.—For section 461 of the said Code the following shall be substituted, namely :—

“461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—  
 Receipt by next friend or guardian *ad litem* of property under decree for minor.

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

“(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.”

E.—For section 464 of the said Code as amended by the Civil Procedure Code Amended Act, 1888, the following shall be substituted, namely :—

“464. Nothing in this Chapter applies to a Sovereign Prince or ruling Prince and Chiefs and warde of Dourt. Chief suing or being sued in the name of his State or being sued, by direction of the Governor General in Council or a Local Government, in the name of an agent or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.”

## THE SCHEDULE.

### ENACTMENTS REPEALED.

• (See section 2).

Number and year.	Title or subject.	Extent of repeal.
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#### *Acts of the Governor General in Council.*

XIV of 1858	...	Minors (Madras)	...	The whole.
XL of 1858	...	Minors (Bengal)	...	So much as has not been repealed.
IX of 1861	...	Minors	...	The whole.
XX of 1864	...	Minors (Bombay)	...	The whole.
XIV of 1869	...	Bombay Civil Courts Act, 1869.		So much of the last paragraph of section 16 as has not been repealed.
VII of 1870	...	Court-fees Act, 1870	...	Section 19H, and article 10 of Schedule I.
IV of 1872	...	Punjab Laws Act, 1872		So far as it relates to Act XL of 1858.

Number and year.	Title or subject.	Extent of repeal.
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*Acts of the Governor General in Council.—(Continued)*

XIX of 1873	... North-Western Provinces Land-revenue Act, 1873	Section 258.
XIII of 1874	... European British Minors Act, 1874.	The whole.
XV of 1874	... Laws Local Extent Act, 1874.	So far as it relates to any enactment repealed by this Act.
XX of 1875	... Central Provinces Laws Act, 1875.	So far as it relates to Act XL of 1858.
XVIII of 1876	... Oudh Laws Act, 1876.	So far as it relates to Act XL of 1858.
XIII of 1879	... Oudh Civil Courts Act, 1869.	Clause (1) of section 25 relating to proceedings under Acts XL of 1858 and IX of 1861.
XIV of 1882	... Code of Civil Procedure	The second paragraph of section 443.
XVIII of 1884	... Punjab Courts Act, 1884	So much of section 29 as has not been repealed.
XVII of 1885	... Central Provinces Government Wards Act, 1885.	Section 5.
XII of 1887	... Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.	Clause (b) of section 23, sub-section (2).
XI of 1889	... Lower Burma Courts Act, 1889.	The wards "to be and" in section 99, sub-section (1), and section 102, so far as it relates to Act XIII of 1874.

*Madras Regulations.. . .*

V of 1804	... Court of Wards	... Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831	... Minors' Estates	... Section 3.

*Regulations under the Statute 33 Victoria, Chapter 3.*

IX of 1874	... Arakan Hill District Laws.	So far as it relates to Acts XL of 1858 and IX of 1861.
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S. HERVEY JAMES,  
Secretary to the Government of India,

## ACT NO. XI OF 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

*(Received the assent of the Governor-General on the 4th May 1859.)*

An Act to improve the law relating to sales of Land for arrears of Revenue in the Lower Provinces under the Bengal Presidency.

Whereas it is expedient to discontinue the practice of obtaining the  
Preamble. previous sanction of the Board of Revenue to sales  
of estates for arrears of Revenue, or other demands  
of Government, in the Province of Cuttack: and whereas it is just that  
a person having a lien upon an estate, and paying the money necessary to  
protect it from sale for arrears of Revenue, should be reasonably secured:  
and whereas it is expedient to afford sharers in estates, who duly pay their  
shares of the Sudder Jumma of their estates, easy means of protecting their  
shares from sale by reason of the default of their co-sharers: and whereas  
it is expedient to afford landholders, particularly absentees, facilities in  
guarding against the accidental sale of their estates for arrears of Revenue  
by reason of the neglect or fraud of their agents: and whereas it is expedient  
to provide for the voluntary registration of dependent talooks existing  
at the time of settlement: and whereas it is expedient to protect the holders  
of registered under-tenures created since the settlement, and not resumable  
by the grantors or their representatives, from loss by the avoidance of  
their tenures on the occasion of a sale of the superior estate for arrears of  
public Revenue, when the arrears can be realized by such sale: and to give  
absolute security to such tenures by special registry, when shown to be held  
at rents sufficient for the security of the Revenue: and it is therefore  
proper for the above and other purposes, to improve the law relating to  
sales of land for arrears of Revenue in the Provinces of Bengal, Behar, and  
Orissa; it is enacted as follows:—

1. *Repealed by Act XIV of 1870.*

2. If the whole or a portion of a kist or instalment of any month of  
the era according to which the settlement and kist-  
bundee of any mehal have been regulated, be unpaid  
on the first of the following month of such era, the

What is an arrear of  
Revenue.

sum so remaining unpaid shall be considered an arrear of Revenue.

3. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of Revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of Revenue, shall be paid up in each District under their jurisdiction, in default of which payment the estates in arrear in those Districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the Official Gazette, and shall direct corresponding publication to be made, as far as regards each District in the language of that District, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs, and at every Thannah Station of that District; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. *Repealed by Act XII of 1891.*

5. Provided always that no estates and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the description mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to Section III of this Act, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and Police Thannah of the Division in which the estate or share of an estate to which the notification relates, is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Moonsiff's Court or Police Thannah, in some one or more of such Courts or Thannahs; and also at the catcherry of the malgoozar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

*First.*—Arrears other than those of the current year, or of the year immediately preceding.

*Secondly.*—Arrears due on account of estates other than that to be sold.

*Thirdly.*—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

*Fourthly.*—Arrears due on account of tuccavee, poolbundee, or other demands not being land Revenue, but recoverable by the same process as arrears of land Revenue.

6. The Collector or other Officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section 3 of this Act; issue notification in the language of the District, to be affixed in his own

Notification of sale to be issued, and no tender after latest day of payment to stop the sale.

Office and in the Court of the Judge of the District, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the office of the Collector or other Officer as aforesaid. And if the Government Revenue of any estate or share of an estate to be sold, exceed the sum of five hundred Rupees, a notification of the sale of such estate or share of an estate shall be published in the Official Gazette. Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other Officer as aforesaid, and shall be sold to the highest bidder. And no payment or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

7. Whenever an estate or share of an estate is notified for sale as provided by Section 6 of this Act, the Collector or other Officer as aforesaid shall affix a proclamation in the language of the District, in his own Office and as soon thereafter as may be in the Moonsiff's Courts and Police Thannahs within which the estate or share of an estate, or any part of it, is situated, and also at the Cutcherry of the malgoozar or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, forbidding the ryots and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

8. No claim to abatement or remission of Revenue, unless the same shall have been allowed by the authority of Government held by a defaulter, and no private demand or cause of action not to invalidate a sale, whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulters and sufficient to pay the arrear of Revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless, such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in Section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of Revenue due.

9. The Collector or other Officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to Section 2 of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof subject to the rules in force for

taking security in the cases of parties in Civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

**10. When a recorded sharer of a joint estate, held in common tenancy,**

Separation of shares held in common, by the opening of a separate account.

desires to pay his share of the Government Revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by applicant. The Collector shall then cause to be published in his own Office, in the Court of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

**11. When a recorded sharer of a joint estate, whose share consists of**

Separation of shares consisting of specific portions of land, by the opening of a separate account.

a specific portion of the land of the estate, desirous to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of Sudder Jumma heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

**12. If any recorded proprietor of the estate, whether the same be held**

If objection be made, parties to be referred to the Civil Court.

in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate that the amount of Sudder Jumma stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the jumma thereof, the Collector shall refer the parties to the Civil Court, and

shall suspend proceedings until the question at issue is judicially determined.

13. Whenever the Collector shall have ordered a separate account or  
 Sale of separate shares. accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of Revenue, the Collector or other Officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in Section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

14. If in any case of a sale held according to the provisions of the  
 Entire estate may be sold under certain conditions. last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other Officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of Revenue at a future date, unless the recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other Officer as aforesaid shall give such certificate and delivery of possession as are provided for in Sections 28 and 29 of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in Section 6 of this Act.

15. If any recorded proprietor or co-partner of an estate shall deposit  
 Deposit for the protection of an estate from sale. with the Collector money, or Government Securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate and authorizing the Collector to apply to the payment of any arrear of Revenue that may become due from that estate, the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of Revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section 3 of this Act, the Collector shall apply to the payment of such arrear the said money or Securities or such part thereof or of any interest due on the said Securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such Securities, and may then sell and transfer the Securities, for any balance that may remain. And so long as any money or Securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of Revenue. All monies and Securities so deposited shall be exempt from attachment otherwise than in execution of decree of a Civil Court.



16. It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

17.\* No estate held under attachment by the Revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment or managed by a Revenue Officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

18. It shall be competent to the Collector or other Officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other Officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption. Provided, however, and it is hereby enacted, that the Collector or other Officer as aforesaid or the Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other Officer as aforesaid of the order of exemption.

19. Sales shall ordinarily be made by the Collector or other Officer as aforesaid in the Land Revenue Office at the Sudder Station of the District: Provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such Office whenever they shall consider it beneficial to the parties concerned.

20. In case the Collector or other Officer as aforesaid shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed of aforesaid; or if, having commenced it, he be unable, from any cause, to complete it; he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his Cutchery; and so on from day to day, until he shall be able to commence upon, or to complete the sale; but, with the exception of adjournment so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

21. On the day of sale fixed according to Section 6 of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the Collector's Office of the District being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other

\* The first portion of this section has been repealed by Act III, of 1881, B. C.

Officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section 22 of this Act.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of the estate or share as the Collector or other Officer as aforesaid may think necessary, either in cash, Bank of Bengal Notes, or Post Bills, or Government Securities to be valued at the market rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

23. The full amount of purchase-money shall be made good by the purchaser before the sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be resold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public Revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in Section 6 of this Act, but such notification shall not be published until expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realizing.

25. Repealed by Act 7 of 1868, B. C.

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul

the sale ; and the local Government in any such case may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

27. All sales of which the purchase-money has been paid up as prescribed in Section 53 of this Act and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

28. Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed to any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified ; and the Collector shall also notify such transfer by written proclamation in his own Office, and in the Courts of the Moonsiff's and Police Thannahs within whose jurisdictions any part of the estate or share sold shall be situated.

29. The Collector or other Officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places ; and by affixing a copy of the certificate at the Mal Cutchery or in some conspicuous place of the estate or share of an estate purchased.

30. The party certified as the proprietor of an estate or share of an estate by purchaser under this Act, shall be answerable for all instalments of the revenue Government which may fall due after the latest day of payment aforesaid.

31. The Collector shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold ; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district ; holding the residue, if any, in deposit on account of the recorded proprietor or proprietors of the estate or share of an estate sold or their heirs or representatives to be paid to his or their receipt on demand in manner following : to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. And if before the payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

**32.** The annulment by a Commissioner or by Government of a sale made under this Act, shall be publicly notified by the Collector or other Officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section 82 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public Securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of Section 25 or Section 26 of this Act.

**33.** No sale for arrears of Revenue or other demands realizable in the same manner as arrears of Revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section 25 of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money. Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with the sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

**34.** If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favor such decree was passed shall lose all benefit therefrom. And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government Securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

**35.** In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public Securities.

**36.** Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

**37.** The purchaser of an entire estate in the permanently settled Districts of Begal, Behar, and Orrissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions:

*First.* Istemraree or Mokurreree tenures which have been held at a fixed rent from the time of the permanent settlement.

*Secondly.* Tenures existing at the time of settlement, which have not been held at a fixed rent. Provided always that the rents of such tenure shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

*Thirdly.* Talookdaree and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

*Fourthly.* Leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning, or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Provided always that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any ryot, having a right of occupancy at a fixed rent or a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietors, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

**38.** The following rules for the registration of talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

Registration of talookdaree tenures created after settlement and held for terms of years.

**39.** There shall be two sets of registers, one for common registry and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Government.

Common and special registry.

**40.** The holder of any talookdaree or other similar tenure, such as is described in Section 38 of this Act, desirous of registering it, shall apply by petition to the

Application for registry.

Collector of the District to which the estate belongs. The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable :—

1. The Pargunnah or Pergunnahs in which the tenure is situated.
2. The nature of the tenure.
3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.
6. The date of the deed constituting the tenure, or the date when the tenure was created.
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the tenure.
9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said Section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

41. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorised agent of such proprietor or proprietors, with a copy of the application annexed ; and shall cause a notice, with a copy of the application annexed, to be affixed in his Office, and at the Mal Cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorised agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court ; otherwise he shall grant the application. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding Section. If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government Revenue to be made ; and if he is satisfied that the Government Revenue of the parent

estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected. If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

43. Leases of lands of the description specified in the Fourth exceptional class in Section 37, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of talook-daree and other similar tenures.

Registration of cases of certain land.

44. Tenures of the first and second exceptional classes in Section 37 may be registered at the option of the holders; and when so registered shall be, entered only in the special register. Application for such registry shall contain the particulars specified in Section 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in Section 41. If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected. If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time. Provided always that nothing contained in this Section shall be understood as rendering registration necessary for the protection of *bona fide* tenures of the description herein referred to.

Proviso.

45. Repealed by Act III of 1862.

Section 2 Act 3 of 1862, B. C., applications under Sections XL, XLIII, and XLIV of Act XI of 1859, for registry of tenures and farms created before the passing of Act XI of 1859, must be made within three years of the passing of this Act. Applications for the registry of tenures existing at the time of the passing of this Act but created after the passing of Act XI of 1859, must be made within three months of the passing of this Act. Applications for the registry of tenures created after

Time for registration under sections 40, 43, and 44 of Act XI of 1859, extended.

the passing of this Act must be made within three months of the date of the Deed constituting the tenure.

46. The actual expenses of any measurement, survey, or local enquiry made under Sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

47. No Civil Court shall be competent to order the Revenue Authorities to enter any tenure or farm in the special register. Civil Court not competent to order entry in the special register. Provided always that the refusal of the Revenue Authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

48. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm, may file a suit for the cancelment of the same. Suit for the cancelment of the registry of a tenure or farm.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue Authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue Authorities to whom they are subordinate, and from the local Government; and all orders passed under the Sections aforesaid shall be open to appeal in usual course. The order of a Commissioner for the special registry of a tenure under the provisions of this Act, shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the local Government, on the ground of the Government Revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be. Proceedings of Revenue Authorities in the registration of tenures, &c.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public Revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government Revenue. Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector. Effect of entry in the special register.

51. Tenures and farms of the third exceptional class described in Section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in Section 42, shall, in case of the sale of the parent estate for arrears of Revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue Authorities, upon such application, be in favor of the claimant. Protection of talookdarees tenures pending enquiry, in case of sale of parent estate for arrears of Revenue.



**52. The purchaser of an estate in a District not permanently settled,**

**Rights of a purchaser of an estate not permanently settled, sold for its own arrears.**

sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this Section shall be construed to entitle any purchaser of land at a public sale for arrears of Revenue to demand a higher rate or rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the Pergunnah, Mouzah, or other local Division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

**53. Excepting sharers in estates under butwarrah who may have saved**

**Rights of a purchaser being a sharer in any estate,**

their shares from sale under Sections 33 and 34, Regulation XIX, 1814, and sharers with whom the Collector, under Sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the said

**And of a purchaser of an estate not sold for its own arrears,**

estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself; shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to under tenants or ryots, which were not possessed by the previous proprietor at the time of the sale of the said estate.

**54. When a share or shares of an estate may be sold under the provi-**

**Rights of purchasers of shares of estate.**

sions of Section 13 or Section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

**55. Arrears of rent which on the latest day of payment may be due**

**Recovery of arrears due to defaulters,**

to the defaulter from his under-tenants or ryots, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

**56.** Any Collector or other Officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open Cutcherry or Office for the time being, by fine to an extent not exceeding two hundred Rupees, commutable if not paid to imprisonment in the Civil Jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other Officer as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

**Punishment for contempt.**  
Default in making deposit to be considered a contempt.

**57.** A default to make good a bid by making the deposit required by Section 22 of this Act, shall be held to be a contempt.

**58.** When an estate is put up for sale under this Act for the recovery of arrears of Revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one Rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other Officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

**59.** Repealed by Act III of 1862.  
**Section 3 Act III of 1862.** The Collector on the part of the Government shall be entitled to demand from applicants under Sections 10 and 11, Sections 15 and 16, and Sections 40, 43, and 44 of Act XI of 1859, fees not exceeding the rates specified in the Schedule to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees are tendered therewith.

**60.** The provisions of Regulation VII, 1822, and Regulation IX, 1825, shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

**61.** In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising by the authority of Government the powers of a Collector or Deputy Collector.

**62.** The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal, as are or shall be subject to the general Regulations of that Presidency.

## SCHEDULE A.

I certify that A, B, has purchased under Act No. XI of 1859 the mehal (or share of a mehal) specified below, standing in the towjee of the District

of and that his purchase took effect on the      day of  
*(being the day after that fixed for last day of payment).*

(Signed) D. E.  
 Collector.

#### SPECIFICATION.

*(If of an entire Mehal.)*

Towjee number.

Name of Mehal.

Name of the former proprietor.

Sudder Jumma.

*(If of a share of a Mehal.)*

Towjee number of the entire mehal.

Name of the entire Mehal.

Sudder Jumma of the entire Mehal.

Description of the share sold.

Subordinate Towjee number of the share sold.

Name of the former proprietor of the share sold.

Sudder Jumma for which the share sold is separately liable.

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#### SCHEDULE.\*

##### FEES.

1. For filing an application under Section 10 or Section 11 of Act XI of 1859 for opening a separate account for a share of an entire estate—

If the annual jumma of the share do not exceed one thousand Rupees at the rate of ten per cent. upon the jumma.

If the annual jumma of the share exceed one thousand Rupees, at the rate of ten per cent. upon a thousand Rupees, and two per cent. upon all above that amount.

2. For filing an application for a deposit of money or Government Securities under Section 15 of the said Act half per cent. on the amount deposited.

For any interest on Government Securities so deposited, drawn by the Collector, half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under Section 16 of the said Act half per cent. of the amount withdrawn.

3. For filing an application under Section 40, 42, or 45 of the said Act for the registration of an under-tenure or farm.

If the annual rent of the under-tenure do not exceed one thousand Rupees, at the rate of five per cent. on the rent.

If the annual rent of the under-tenure or farm exceed one thousand Rupees, at the above rate up to one thousand Rupees, and at one per cent. on all above that amount.

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\* Schedule annexed to Act III of 1862.

## ACT NO. VII OF 1868.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

*(Received the assent of the Lieutenant-Governor on the 16th July 1868,  
and of the Governor-General on the 10th August 1868.)*

An Act to make further provision for the recovery of Arrears of  
Land Revenue and public Demands recoverable as Arrears of  
Land Revenue.

Whereas it is expedient to amend and extend the law for the recovery  
of arrears of Land Revenue and Public Demands  
recoverable as arrears of Land Revenue. It is  
declared and enacted as follows :—

1. In this Act and in Act XI of 1859 *(to improve the law relating  
to sales of land for arrears of Revenue in the  
Lower Provinces under the Bengal Presidency),*  
the words in this section mentioned shall have the meanings therein attri-  
buted to them respectively.

The word “Proprietor” includes any tenant by  
whom any estate or tenure is held directly under  
Government.

The word “Revenue” includes every sum annually payable to Govern-  
ment by the Proprietor of any estate or tenure in  
respect thereof, and every sum payable to Govern-  
ment in respect of Tuccavee, or of any money advanced by Government to

Proprietors of land for making or repairing embankments, reservoirs, or water-courses, or other improvements on the land held by them.

The word "Estate" means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the

"Estate."

Register known as the General Register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of Section 10 or Section 11 of the said Act XI of 1859, have been opened.

The word "Tenure" includes all interests in land, whether rent-paying or lakhiraj (other than estates as above defined),

"Tenure."

and all fisheries, which, by the terms of the grants creating the same, or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale an arrear of rent may or may not have been especially reserved by stipulation in any instrument.

The "Jurisdiction" of a Collector means the District to which such Collector is appointed, or throughout which any

"Jurisdiction".

officer vested with the powers of a Collector is authorized to exercise such powers.

The word "Collector" includes any person vested with the powers of a Collector.

"Collector."

\* \* \* \*

2. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act, or the

Appeals against sales.

said Act XI of 1859,† so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 23 of the said Act XI of 1859; or be presented to the Collector or other officer duly authorized to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise; and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act XI of 1859, which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor; such compensation not to exceed the interest at the highest rate of the current Government securities on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office: and the order of the Commissioner shall in such cases be final.

\* The rest of this section has been repealed by Act VII of 1880, B. C.

† Two lines following have been repealed by Act VII of 1880, B. C.

3. From the date when this Act comes into operation, the word  
"thirty" shall be substituted for the word "fifteen."

Time for revenue sales  
extended.

in section 6 of the said Act XI of 1859, and the words "or more than thirty," in the same section shall be omitted therefrom, and the said section shall be read as if the same had not been inserted therein.

4. From the date when this Act comes into operation, the word  
"sixtieth" and "sixty" shall substituted for the

Time for confirmation of  
sales extended.

words "thirtieth" and "thirty" respectively, wherever the said words occurs in section 27 of the said Act XI of 1859.

5. Every notice in and by this Act, or by the said Act XI of 1859,

Mode of serving notices.

directed to be served, shall be served by delivering to the person to whom it may be directed, a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, to some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last-known place of abode of such person. In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

- 6.\* It shall be lawful for the Lieutenant-Governor of Bengal, by an

Power to cause notices  
to be served of arrears or  
demands.

order published in the *Calcutta Gazette*, to empower all Collectors in any District in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors before proceeding under the provisions of the said Act XI of 1859 or of this Act, to realize from such proprietors any arrears of revenue which may be due from such proprietors, and the costs of serving any such notice as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue which may be due from such proprietors and shall be recoverable as if the same were a portion of such arrears of revenue; and every such order may from time to time be altered, varied, or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published.

7. In addition to the notices in and by Section 7 of the said Act XI

Notices to ryots to be  
posted in sub-divisional  
Cutcherry.

of 1859 directed to be posted, a similar notice shall be posted at the Sub-Divisional Cutcherry within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.

\* Portions omitted have been repealed by Act VII of 1860, B. C.

8. Every certificate of title which may be given to any purchaser under the provisions of Section 28 of the said Act XI of 1859, or of Section 11 of this Act, shall be conclusive evidence, in favor of such purchaser and of every person claiming under him, that all notices in or by this Act, or by the said Act XI of 1859, require to be served or posted, have been duly served and posted; and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission informality or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

9. All sales of lands of lakhiraj tenure, which may heretofore have been made in conformity with the procedure established by the said Act XI of 1859, for payment of arrears of revenue or of demands, shall have such and the same force and effect as if they had been made in execution of a decree against the person liable to pay the revenue or demand for satisfaction of which such sale may have been made.

10. Every estate shall, for the purposes of this Act and of the said Act XI of 1859, be deemed to be within the Collectorate of the Collector upon whose General Register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the Collectorate of any other Collector.

11.\* Whenever any revenue payable to Government in respect of any tenure not being an estate, shall be in arrear after the latest day of payment fixed in the manner prescribed in Section 3 of Act XI of 1859, the Collector to whom such revenue is payable may cause such tenure to be sold in the manner, and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue, and the Collector shall apply the purchase-money arising from such sale according to the provisions of Section 31 of the said Act XI of 1859, except that the residue, if any, shall be held in deposit on account of the holder of the tenure sold, and not on account of the proprietor of the estate; and every such Collector shall, upon every such sale of any tenure being final and conclusive, make out such certificate of title thereof as is provided in Section 28 of the said Act XI of 1859 with respect to estates.

\* As modified by Act II of 1871, B. C.

Provided that no tenure shall be sold for the recovery of arrears of revenue other than those of the current year or of the year immediately preceding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received, shall have been fixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act XI of 1859, in the office of the Collector or other Officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and police thannah of the division in which the tenure to which the notification relates is situated; or if the tenure be situated within the jurisdiction of more than one Moonsiff's Court or police thannah, in some one or more of such courts or thannahs, and also at the cutcherry of the malgoozar or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

**12.** The purchaser of any tenure sold under the provisions of Section 11 of this Act shall acquire it free from all encumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

*First.*—Istemraree or mokurruree tenures which have been held at the fixed rent from the time of the permanent settlement.

*Secondly.*—Tenures existing at the time of permanent settlement, which have not been held at a fixed rent. Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

*Thirdly.*—Tenures created or recognized by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement.

*Fourthly.*—Tenures of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

**13.** Every purchaser of a tenure under Section 11 of this Act shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

**14.** Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser, under Section 11 of this Act, to eject any ryot having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

Sections 15—28 Repealed by Act VII of 1880. B. C.



## SCHEDULE A.

*(Referred to in Section 15, 16, 18 and 19.)*

*Certificate of Arrear of Revenue (or demand, as the case may be) filed in Office of Collector of District.*

Name of Debtor.	Address.	Nature of demand.	Amount of demand.	No. of certificate.
C. D.				

I certify that the abovementioned sum of Rupees                      is due to Government from the abovenamed C. D.

Dated this              day of              18 .

A. B.,  
Collector of

## SCHEDULE B.

*(Referred to in Section 19.)*

## NOTICE OF DEMAND.

*To the Collector of the District of*

Name of Debtor.	Address of Debtor.	Nature of demand.	Amount of demand.
C. D.			

The above sum of              is due from the said C. D. in respect of  
Certified this              day of

A. B.,  
of

## SCHEDULE C.

*(Referred to in Section 21.)*

To

C. D. OF

SIR,

Take notice that a Certificate under Sections (15, 16, 18, or 19, as the case may be) of Act VII of 1868 of the Lieutenant-Governor of Bengal in Council of (*Arrears of Revenue or Demand, as the case may be,*) No. , for the sum of Rs. , due from you on account of , has been this day filed by me in my office, and that I shall forthwith proceed to levy the amount according to law.

A. B.,

*Collector of**This day of 18 .*

## SCHEDULE D.

*[Referred to in Section 22.]*

To

The Collector of

The Petition of E. F., of

SHEWETH,

That a certificate under Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, No. , for the sum of Rs. ' has been filed in your Office on the day of 18 .

That your petitioner is aggrieved by the said certificate.

That your Petitioner believes that such Certificate is erroneous upon the grounds following, that is to say—

That the said grounds are, to the best of your Petitioner's belief, true in fact.

Your petitioner therefore prays that the said Certificate may be set aside [*or modified, or varied*].



## ACT NO. VII OF 1880.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

*(Received the assent of the Lieutenant-Governor on the 22nd April 1880,  
and of the Governor-General on the 26th June 1880.)*

### An Act to amend the Law for the Recovery of certain Public Demands.

**Preamble.** Whereas it is expedient to amend the law for the recovery of certain dues and debts demandable by Public Officers: It is hereby enacted as follows:—

**Short title.** 1. This Act may be called. "The Public Demands' Recovery Act, 1880."

**Extent.** Notwithstanding anything contained in section 2, it extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

**Commencement.** It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor-General.

**Construction of this Act.** 2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council. The powers given by this Act shall be deemed to be in addition to and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

**Repeal of Acts in Schedule.** 3. The Acts specified in the first Schedule annexed to this Act are hereby repealed from and after the commencement of this Act, to the extent specified in the third column of that Schedule: provided that this repeal shall not affect—

(a) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder:

(b) any liability created under any enactment hereby repealed.

**Certificate under Bengal Act VII of 1868 to be enforced under this Act.** Every Certificate made under the provisions hereby repealed of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, may be enforced under the provisions of this Act.

**Definitions.** 4. In this Act, unless the context otherwise requires, but not in the other Acts mentioned in Section 2

"Section." "Section" means a section of this Act.

"Collector" means (a) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta;

(b) without those limits, the Collector of a District or any officer especially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act; and

(c) any officer in charge of a Sub-division of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

5. In the following cases, that is to say—

(1) when, under the provisions of Act XI of 1859, passed by the Governor-General in Council, or of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, an estate or tenure has been sold for its own arrears; and the sale proceeds are insufficient to liquidate the same; or  
 When an estate or tenure has been sold for its own arrears; and the sale proceeds are insufficient to liquidate the same; or  
 the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of Section 3 of Act XI of 1859, passed by the Governor-General in Council;

the Collector may make under his hand, and in form No. 1 in the second Schedule annexed to this Act, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

The Collector of the District may make a certificate of the unpaid arrears.

6. (a) Subject to the provisions of this Act, every certificate made under the provisions of section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

(b) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the Civil Court to have the said Certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section 12, then within fifteen days after such petition has been heard and determined.

If no such suit brought within one year, or if brought and decided against judgment-debtor, the Certificate to become absolute, and have effect of a decree of the Civil Court to all intents and purposes.

When any arrear of a Public Demand is unpaid by the person liable to pay the same,

(c) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted, is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a Civil Court.

7. When any arrears of the following Public Demands are unpaid by the person liable to pay the same, that is to say—

(1) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue :

(2) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him :

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council, that is to say—in Act VIII of 1862, Section 9; in Act VI of 1873, Section 50; in Act IV of 1875, Section 1; in Act V of 1875, Section 57; in Act III of 1876, Section 42, Section 73, and Section 85; in Act VII of 1876, Section 82; in Act VIII of 1876, Section 138; in Act VII of 1878, Section 36 ;

(4) in the case of a person to whom the collection of tolls has been farmed under the provisions of Section 8 of "The Canals Act, 1864," or of the sureties of such person—any sum of money due in respect of such farm :

(5) in the case of a person having charge of a ferry subjected to the payment of a yearly rent—any arrear of such rent ascertained and certified as provided in Regulation VI of 1819, Section 10 :

(6) any arrears of revenue or rent payable to the Secretary of State for India in Council from any ryot, or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable :

(7) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent, whether such arrears became due before or after the management devolved upon such Court or such Authorities: provided that this clause shall not apply to any arrears of rent at any enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court :

(8) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act :

(9) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act ;

the Collector of the district may make under his hand, and in form the Collector of the district may make a certificate of the unpaid demand. No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his Office: provided that no such Certificate shall be made in respect of any such demand, the recovery of which is barred by any law of Limitation for the time being in force.

8. (a.) Subject to the provisions of this Act, every Certificate made under the provisions of Section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than case (7) mentioned in the said Section 7, the Secretary of State for India in Council and in the said case (7) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of

Court, then such Minor, Lunatic, or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

(b.) Such judgment-debtor may at any time within one year after the

Judgment-debtor may bring a suit in the Civil Court to contest the certificate. If no such suit within one year, or if brought and decided against the judgment-debtor, Certificate to become absolute.

service upon him of such notice as is mentioned in Section 10 bring a suit in the Civil Court to contest his liability to pay the amount stated in the said Certificate, and to have such Certificate cancelled: but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under Section 12 the ground upon

which he claims to have such Certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Provided that no Certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(1) that the amount stated in the Certificate was actually paid or discharged before the making of such Certificate:

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a Public Officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or Public Officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the Certificate suffered substantial injury from some error, defect or irregularity in such proceedings:

(3) in cases other than those mentioned in clause (2)—that the amount stated in the Certificate was not due by the judgment-debtor under the Certificate:

(4) want of jurisdiction.

Nothing in this proviso shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

9. (a.) When any arrear of any of the public demands specified in

In case of arrears of public demand payable to Officer other than Collector, such Officer may give notice to Collector.

Section 7 is unpaid by any person liable to pay such public demand to a public Officer other than a Collector, or when any such demand as is specified in clause (7) of the said section is unpaid by any person liable to pay the same to a Manager appointed

by the Court of Wards, such Officer or such Manager may give to the Collector of the district, in which such person resides, or in which such demand is payable, a notice in writing in form No. 3 in the second Schedule annexed to this Act: provided that no such notice may be given in respect of any such demand, the recovery of which is barred by any law of Limitation for the time being in force.

(b.) Every such notice given by a Manager shall be verified by such

Such notice given by a Manager to be verified and stamped as a plaint.

Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect there-

of a Court-fee of the same amount as is payable under the Court-fees' Act

for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such notice.

(c.) On receipt of such notice, such Collector, if satisfied that such demand is justly recoverable, may make under his hand, and in the form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and shall cause the same to be filed in his office.

(d.) The provisions of Section 8 shall apply to every such Certificate.

10. When a Certificate has been filed in the office of a Collector under the provisions of Section 5, or Section 7, or Section 9, such Collector shall issue to the judgment-debtor a copy of such Certificate and a notice in form No. 4 in the second Schedule annexed to this Act. From and after the service of such notice, such Certificate shall bind all immovable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such immovable property had been attached under the provisions of Section 274 of the Code of Civil Procedure. A copy of such Certificate may be transmitted by post to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such Certificate shall, if the aforesaid notice has been served, bind in like manner all immovable property of such judgment-debtor situate within the jurisdiction of such last-mentioned Collector.

When Certificate filed notice to be given to judgment-debtor. Upon service of notice, Certificate to bind immovable property of judgment-debtor.

11. If in any case other than the case mentioned in clause (7) of Section 7, the Collector is satisfied that any person against whom a Certificate has been filed under the provisions of Section 5, or Section 7, or Section 9, is likely to conceal, or remove, or dispose of the whole or any part of his movable property, and that the realization of the amount of such Certificate will in consequence be delayed or obstructed, he may at any time after making such Certificate direct an attachment of the whole or any part of the movable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching movable property, and subject to the provisions of Section 266 of the same Code. Such property may be sold for the purpose of satisfying such Certificate, if no petition of objection is filed under Section 12, or if any such petition is filed, then as soon as it has been heard and determined.

12. If any person, who has been served with a notice under Section 10, denies his liability to pay the whole or any part of the amount for which such Certificate has been made and filed against him, he may at any time within thirty days after service of such notice or, where no such notice has been duly served, within thirty days after the execution of any process for enforcing such certificate file a petition, denying his liability as aforesaid, before the Collector by whom such Certificate has been made. Such petition shall be in, or as nearly as possible in, the form No. 5 in the second Schedule annexed to this Act.

Any person served with notice under Section 10 may file a petition of objection.



13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day, or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such Certificate was made, and may set aside or modify or vary the Certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

14. The Collector shall have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which Collector directs the payment of such costs by any such petitioner, the amount thereof shall, if such petitioner be the judgment-debtor, be added to the amount entered in the Certificate, and shall be recoverable as if the same had been originally entered therein.

15. The Collector of a district may refer to any Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any such petition as is mentioned in Section 12, and such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petition accordingly. The provisions of Sections 13 and 14 shall be applicable to any such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner to whom any such petition has been so referred.

16. An appeal from any order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector within fifteen days, and an appeal from any original order of a Collector may be preferred to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such appeal, execution may be stayed, if the Appellate Authority so direct, but not otherwise.

17. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner; but the Commissioner may in any case in which he thinks fit, revise any order passed by a Collector or Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner.

18. Every Certificate made under the provisions of Section 5, or Section 7, or Section 9, may be enforced and executed, upon the expiry of one month after service of the notice mentioned in Section 10, or when any such petition as is mentioned in Section 12 has been filed, then as soon as such petition has been heard and determined.

19. Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money, and all the practice and procedure provided by the said Code of Civil Procedure

in respect of sales in execution of decrees; in respect of raising the amount of a decree otherwise than by sale of immovable property under the provisions of Sections 305, 320, 322, 323, and 324 of the said Code; in respect of arrests in execution of decrees for money; in respect of the execution of decrees by imprisonment; in respect of insolvent judgment-debtors; in respect of claims to attached property; in respect of resistance to execution; and in respect of the execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued to enforce such certificate and realize the amount recoverable thereunder, save that all the duties, powers and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such Certificate, or any copy thereof transmitted for execution under the provisions of Section 223 of the said Code has been filed. Subject to the control of the Collector and save and except in respect of the provisions relating to insolvent judgment-debtors any of the said duties, powers, and authorities may be exercised by any Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to such Collector.

20. If any immovable property is sold in execution of a Certificate under the provisions of Section 18, and if such Certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immovable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit: provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

21. Every Collector shall cause to be kept in his office a Register in such form as may from time to time be prescribed by Board of Revenue and shall cause to be entered in such Register the particulars of every Certificate made under this Act, which, or a copy of which, has been filed in his office. Such Register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

22. (a) Payment of the amount due under a certificate may be made by instalments, if the Collector who made such Certificate so direct. The payment of any instalment shall be entered in the Register mentioned in Section 21.

(b) When the total amount due under a certificate has been paid and satisfied, the Collector in whose office such certificate was originally filed shall enter satisfaction upon such certificate under his hand and signature; and shall cause the same to be entered in the Register mentioned in Section 21.

(c) When a copy of such Certificate has been transmitted to another Collector, or when such certificate has been made under the provisions of Section 9 upon notice from a Public Officer other than a Collector or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

(d) When a sum has been levied or received by a Collector in respect of a Certificate a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such Certificate was originally made.

23. Every Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner and every such Public Officer as is mentioned in Section 9 shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850, passed by the Governor-General in Council.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

24. All Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue.

### FIRST SCHEDULE.—See Section 3.

Number and year.	Subject of Act.	Extent of repeal.
	<i>Acts passed by the Lieutenant-Governor of Bengal in Council.</i>	
VIII of 1862 ...	An Act to improve the system of Zamindari daks in the provinces subject to the Government of Bengal.	In section 9 the words from and including "which said double amount" to and including a "making default."
VII of 1868 ...	An Act to make further provision for the recovery of Arrears of Land Revenue and Public Demands recoverable as Arrears of Land Revenue.	In section 1 from and including the words "The word 'Demand' means" to the end of the section. In section 2 the words "not being a sale made under, and by virtue of, any execution issued upon a Certificate made as hereinafter is provided." In section 6 the words "or persons liable to any demands" "or persons," "or any Demands," "or persons," "or to any demands," "or persons," and "or of such demands." Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28.

FIRST SCHEDULE.—*See Section 3.*—(Continued).

Number and year.	Subject of Act.	Extent of repeal.
	<i>Acts passed by the Lieutenant-Governor of Bengal in Council.—Continued.</i>	
VI of 1873	... An Act to amend the law relating to Embankments and Water courses.	Section 50, from and including the words "under the provisions" to the end of the section.
I of 1875	... An Act for the Realization of Arrears in Government Estates.	The whole Act.
IV of 1875	... An Act to provide for the summary realization of sums due on account of loans made by the Government during the late famine operations.	Section 1, from and including the words "within the meaning" to the end of the section.
V of 1875	... An Act to provide for the Survey and Demarcation of Land.	In section 57, from and including the words "under section 2" to the end of the section.
III of 1876	... An Act to provide for Irrigation in the Provinces subject to the Lieutenant-Governor of Bengal.	In section 42, from and including the words "under the provisions" to the end of the section. In section 73, from and including the words "under the provisions" to the end of the section. In section 85, from and including the words "under the provisions" to the end of the section.
VII of 1876	... An Act to provide for the Registration of Revenue-paying and Revenue-free lands and of the proprietors and managers thereof.	In section 82, from and including the words "under section" to the end of the section.
VIII of 1876	... An Act to make better provision for the Partition of Estates.	In section 138, from and including the words "under section" to the end of the section.
VII of 1878	... An Act to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal.	In Section 36, from and including the words "or by the process" to the end of the section.
IX of 1879	... An Act to amend the law relating to the Court of Wards.	Section 63.
	<i>Regulations of the Bengal Code.</i>	
III of 1794	... A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of Revenue; and for prescribing the process by which tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain, &c.	Section 12. Sections 16, 17, 18, 19, and 20, so far as they relate to the recovery of money belonging to Government,

## ACT NO. VII. OF 1880.

## SECOND SCHEDULE.

FORM NO. 1 (*See Section 5.*)

*Certificate of Arrears of Revenue filed in the Office of the Collector  
of the District of (name of District)*

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of arrears of Revenue for which this certi- ficate is made, and period for which such Arrears are due.	Estate or tenure for which Arrears of Revenue due.

I hereby certify that the above-mentioned sum of Rs.                      is due  
to the Secretary of State for India in Council from the above-named

*Dated this                      day of                      18                      A. B.*  
*Collector of                      .*

FORM NO. 2 (*See Sections 7 and 9.*)

*Certificate of Arrears of Public Demands filed in the Office of the  
Collector of the District of (name of District).*

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made; and Public Officer [or Manager, and of what estate] to whom due.

I hereby certify that the above-mentioned sum of Rs.                      is due to the Secretary of State for India in Council [or to A. B. a Ward of Court, or a Minor or a Lunatic, by his next friend C. D.] from the above-named.

Dated this                      day of                      18                      A. B.  
Collector of                      .

FORM No 3 ( See Section 9 )

NOTICE OF DEMAND

To the Collector of the District of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this Notice is given.	Nature of the Public Demand for which this Notice is given.

The above sum of Rs.                      is due from the said  
in respect of                      . . .  
Certified this                      day of

A. B.

FORM No. 4 (See Section 10).

NOTICE.

To ( Insert name of Judgment-debtor. )

You are hereby informed that a certificate for Rs.                      due from you on account of                      has been this day made by me against you under the provisions of Sections                      of Act                      of 1880 passed by the Lieutenant-Governor of Bengal in Council and that such Certificate has been filed in this office. If you deny your liability to pay the said sum of Rs.                      you may within thirty days show cause why such Certificate should not be executed. If you fail to show cause within thirty days, or do not show

sufficient cause, such Certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immovable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the Certificate above-mentioned is hereto annexed.

*Dated this                      day of                      18                      A. B.*  
*Collector of*

FORM NO. 5—(See Section 12.)

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWETH—

That a Certificate No.                      for the sum of Rs.                      has been filed against your petitioner in your office under the provisions of section                      of Act                      of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs.                      (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.                      ), and this for the following reasons:—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said Certificate may be set aside (*or modified or varied*).

ACT NO. VII OF 1889.

**THE SUCCESSION CERTIFICATE ACT, 1889.**

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CONTENTS.

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SECTIONS.

1. Title, commencement, extent and application.
2. Repeal.
3. Definitions.
4. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.
5. Court having jurisdiction to grant certificate.
6. Application for certificate.
7. Procedure on application.
8. Contents of certificate.
9. Requisition of security from grantee of certificate.
10. Extension of certificate.
11. Forms of certificate and extended certificate.
12. Amendment of certificate in respect of powers as to securities.
13. Amendment of Act VII, 1870.
14. Mode of collecting court-fees on certificates.
15. Local extent of certificate.
16. Effect of certificate.
17. Effect of certificate granted or extended by British representative in Foreign State.
18. Revocation of certificate.
19. Appeal.
20. Effect on certificate of previous certificate, probate or letters of administration.
21. Effect on certificate of subsequent probate or letters of administration.
22. Validation of certain payments made in good faith to holder of invalid certificate.
23. Prohibition of exercise of certain powers by curators.
24. Effect of certain probates and letters.
25. Effect of decisions under this Act, and liability of holder of certificate thereunder.
26. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.
27. Surrender of superseded and invalid certificate.
28. Provisions with respect to certificate under Bombay Regulation VIII of 1827.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.



## ACT No. VII OF 1889.

### THE SUCCESSION CERTIFICATE ACT, 1889.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the Assent of the Governor General on the 8th March 1889.)*

An Act to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows :—

Title, commencement, extent and application.	1. (1) This Act may be called the Succession Certificate Act, 1889.
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(2) It shall come into force on the first day of May, 1889; and

(3) It extends to the whole of British India (inclusive of Upper Burma except the Shan States);

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865, or by probate of a will to which the Hindu Wills Act, 1870 applies, or by letters of administration with a copy of such a will annexed.

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.
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(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860 or any enactment repealed by that Act.

(3) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881, or any document, referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. In this Act, unless there is something repugnant in the subject or context,—
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(1) "District Court", subject to the other provisions of this Act and to the provisions of proviso (b) to section 23 of the Punjab Courts Act, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge: and

(2) "security" means—

(a) any promissory note, debenture, stock or other security of the Government of India;

(b) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India ;

(c) any stock or debenture of, or share in, a company or other incorporated institution ;

(d) any debenture or other security for money issued by, or on behalf of, a local authority ;

(e) any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Act.

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.

#### 4. (1) No Court shall—

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 36 or section 37 of the Administrator General's Act, 1874, and having the debt mentioned therein, or

(iii) a certificate granted under this Act and having the debt specified therein, or

(iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or

(v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :—

(a) the time of the death of the deceased ;  
(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits ;  
(c) the family or other near relatives of the deceased and their respective residences ;

(d) the right in which the petitioner claims ;  
(e) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and  
(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person

shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

Procedure on application.  
(a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person to whom the certificate is granted—

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

Requisition of security from grantee of certificate  
(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

10. (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

13. (1) For articles 11 and 12 of the first schedule to the Court-fees Act, 1870, the following shall be substituted namely:—

Number.		Proper fee.
"11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value : provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.
"12. Certificate under the Succession Certificate Act, 1889.	In any case.	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest, on

Number.	.	Proper fee.
<p>"12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.</p>		<p>the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.</p>
		<p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p> <p>(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and</p> <p>(2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees."</p>

(2) In the Court-fees Act, 1870, section 19, clause viii, for the words and figures "and certificate mentioned in the First Schedule to this Act annexed, No. 12," the words and figures "and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827" shall be substituted.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870, in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

Local extent of certificate.

15. A certificate under this Act shall have effect throughout the whole of British India.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein be conclusive as against the persons owing such debts or liable on such securities, and shall notwithstanding

ing any contravention of section I, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

18. A certificate granted under this Act may be revoked for any of the following causes, namely:—

- (a) that the proceedings to obtain the certificate were defective in substance ;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion or by the concealment from the Court of something material to the case ;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;
- (d) that the certificate has become useless and inoperative through circumstances ;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Chapter XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be

entitled to take the place of the holder of the certificate in the suit or proceeding.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been perviously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

23. (1) Where a certificate has been granted under this Act or Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841 shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator:

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865:

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

In a case of inferior Courts with jurisdiction of District Court for purposes of this Act.

26. (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22 the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

Surrender of superseded and invalid certificates.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827, the provisions of section 3, section 6, sub-section (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

Provisions with respect to certificates under Bombay Regulation VIII of 1827.



(The First Schedule.—Enactments repealed.)

## THE FIRST SCHEDULE.

## ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Subject or title.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>		
XXVII of 1860.	Collection of debts on successions.	So much as has not been repealed.
XIV of 1869.	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures "Bombay Regulation VIII of 1827" down to and inclusive of the words "representatives of deceased persons) and."
XV of 1874.	Laws Local Extent Act, 1874.	So much as relates to Act XXVII of 1860.
XIII of 1879.	Oudh Civil Courts Act, 1879.	Section 25, clause (3), relating to applications for certificates under Act XXVII of 1860.
V of 1881.	Probate and Administration Act, 1881.	Sections 151 and 153.
XVIII of 1884.	Punjab Courts Act, 1884.	Section 29, sub-section (1), clause (a).
XII of 1887.	Bengal North-Western Provinces and Assam Civil Courts Act, 1887.	Section 23, sub-section (2), clause (c).
<i>Act of the Lieutenant Governor of Bengal in Council.</i>		
VII of 1880.	Public Demand's Recovery Act, 1880.	In section 7, clause (3), the words "and the note to paragraph 12 of Schedule I."

## THE SECOND SCHEDULE.

## FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See Section 11.)

In the Court of

To A. B.

Whereas you applied on the

day of

for a

certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely :—

*Debts.*

Serial number.	Name of debtor.	Amount of debt, including interest on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

*Securities.*

Serial number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this

day of

*District Judge.*

In the Court of

On the application of *A. B.* made to me on the       day of  
 hereby extend this certificate to the following debts and securities, namely :—

*Debts.*

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

*Securities.*

Serial number.	DESCRIPTION.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This extension empowers *A. B.* to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities.]

Dated this

day of

*District Judge.*

# ACT NO. X OF 1865.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 16th March 1865.)*

## An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows :—

Preamble.

### PART I.

#### PRELIMINARY.

- Short title. 1. This Act may be cited as "The Indian Succession Act, 1865."
2. Except as provided by this Act or by any other law for the time being in force, the rule herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.
- Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context—
- Number. Words importing the singular number include the plural: words importing the plural number include the singular; and words importing the
- Gender. male sex include females :
- " Person," " Person " includes any Company or Association, or body of persons, whether incorporated or not :
- " Year," " Year " and " Month " respectively mean a year and month reckoned according to the British calendar :
- " Month,"
- " Immoveable property " includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth :
- " Immoveable property."
- " Moveable property." " Moveable property " means property of every description except immoveable property :
- " Province," " Province " includes any division of British India having a Court of the last resort :
- " British India " means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 & 22 Vic., cap. 106, (*An Act for the better Government of India*) other than the Settlement of Prince of Wales' Island, Singapore and Malacca.

- " District Judge." " District Judge" means the Judge of a principal civil Court of original jurisdiction :
- " Minor." " Minor" means any person who shall not have completed the age of eighteen years, and " minority" means the status of such person :
- " Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :
- " Will." " Codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :
- " Codicil." " Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :
- " Probate." " Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :
- " Executor." " Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :
- " Administrator."

And in every part of British India to which this Act shall extend, " Local Government" shall mean the person authorized by law to administer executive government in such part ; and

" High Court" shall mean the highest civil Court of appeal therein and for the purposes of sections 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.\*

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried †

Interests and powers not acquired nor lost by marriage.

## PART II.

### OF DOMICILE.

Law regulating succession to deceased person's immovable and moveable property, respectively.

5. Succession to the immovable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

\* Section 1 Act No. XIII of 1875.

† " This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, Sec. 2, Act III of 1874.

*Illustrations.*

(a) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(b) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

One domicile only affects succession to moveables.

6. A person can only have one domicile for the purpose of succession to his moveable property.

7. The domicile

of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled : or if he is a posthumous child, in the country in which his father was domiciled at the

Domicile of origin of person of legitimate birth.

time of the father's death.

*Illustration.*

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

*Explanation.*—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

*Illustrations.*

(a) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(g) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

*Exception.*—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

*Exception.*—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

## PART III.

## OF CONSANGUINITY.

Kindred or consanguinity.  
or common ancestor.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and greatgrandfather, and so upwards in the direct ascending line, or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.  
by numeral figures.

24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked

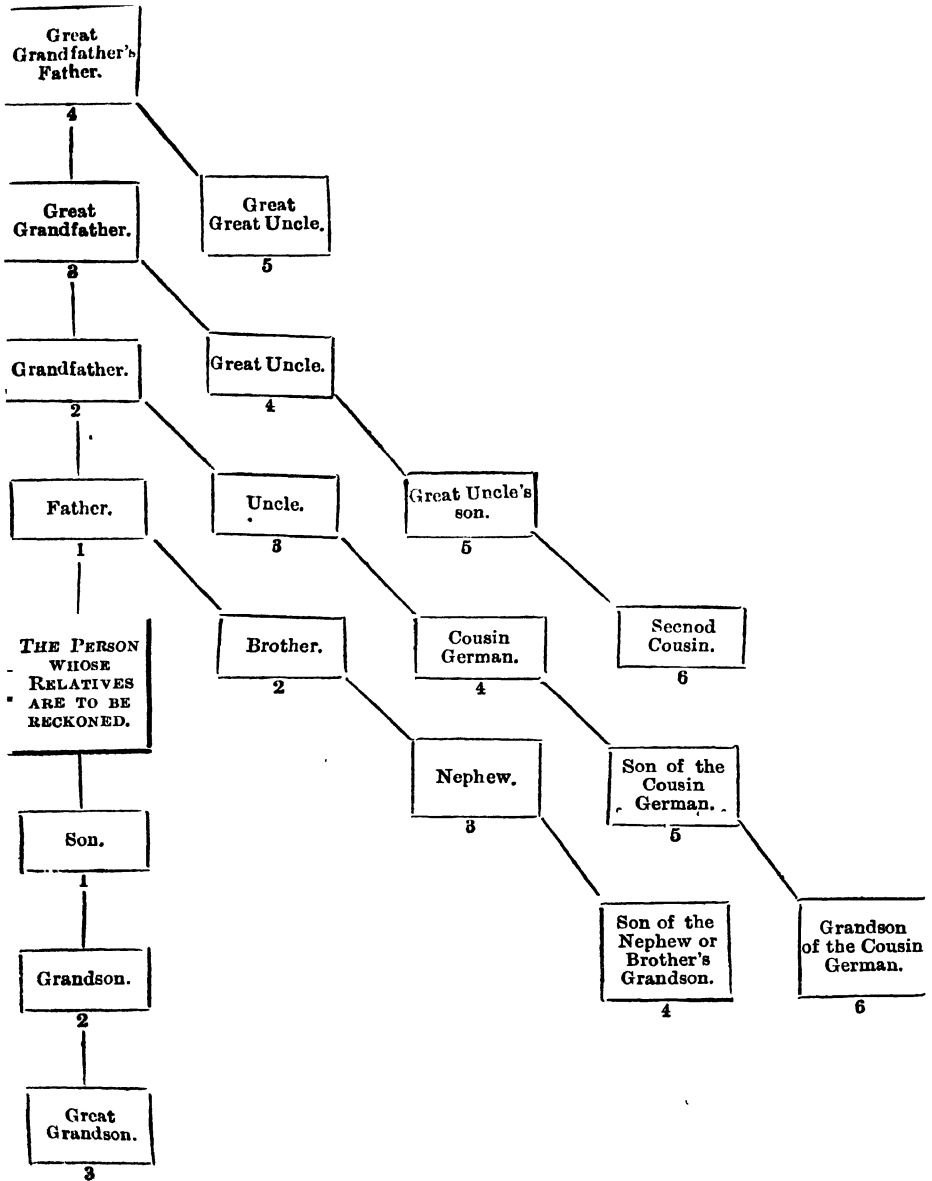
The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.



## TABLE OF CONSANGUINITY.



## PART IV.

## OF INTESTACY.

As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

*Illustrations.*

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d) A has bequeathed 1,000*l* to B and 1,000*l* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

26. Such property devolves [upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

*Explanation.*—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and if he has left none who are of kindred to him, it shall go to the Crown.

## PART V.

## OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a) *Where he has left lineal descendants.*

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follow:—

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Where intestate has left no child, but grandchild or grandchildren.

*Illustrations.*

(a) A has three children, and no more; John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

When intestate has left only great-grandchildren or remoter lineal descendants.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of

kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

*Illustrations.*

(a) A had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one ninth is equally divided between the two great-grand-children.

(c) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b) *Where the Intestate has left no lineal Descendants.*

**34.** Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Rules of distribution where intestate has left no lineal descendants.

**35.** If the intestate's father be living, he shall succeed to the property.

**36.** If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Where intestate's father dead but his mother, brothers and sisters living.

*Illustration.*

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth,

**37.** If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.

*Illustration.*

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

**38.** If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead and his mother and children of any deceased brother or sister living.

*Illustration.*

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and children of George divided the remaining one-third equally between them.

Where intestate's father dead, but his mother living and no brother nor sister nor nephew.

**39.** If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

**40. Where the intestate has left neither lineal descendant nor father**

Where intestate has left  
neither lineal descendant  
nor father nor mother.

nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left  
neither lineal descendant  
nor parent, nor brother  
nor sister.

**41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.**

*Illustrations.*

(a) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b) A, the intestate, has left a great-grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(c) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(d) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

**42. Where a distributive share in the property of a person who has**

Children's advancements  
not brought into hotch-  
pot.

died intestate shall be claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may during his life have paid, given, or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

**PART VI.**

**OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.**

**43. The husband surviving his wife has the same rights in respect of**

Rights of widower and  
widow respectively.

her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

**44. If a person whose domicile is not in British India marries in**

Effect of marriage be-  
tween person domiciled  
and one not domiciled in  
British India.

British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

**45. The property of a minor may be settled in contemplation of mar-**

Settlement of minor's  
property in contemplation  
of marriage.

riage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

## PART VII.

## OF WILLS AND CODICILS.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

*Explanation 1.*—A married woman may dispose by will of any property which she could alienate by her own act during her life.

*Explanation 2.*—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

*Explanation 3.*—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

*Explanation 4.*—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

*Illustrations.*

(a.) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(b.) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(c.) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian. 47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity. 48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

*Illustrations.*

(a.) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour; such will has been obtained by fraud, and is invalid.

(b.) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c.) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d.) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e.) A being of sufficient intellect, undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f.) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(g.) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will not rendered invalid by the intercession and persuasion of B.

(h.) A with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property.  
Will may be revoked or altered.      time when he is competent to dispose of his property by will.

## PART VIII.

### OF THE EXECUTION ON UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—  
Execution of unprivileged wills.

*First.*—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

*Second.*—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

*Third.*—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.  
Incorporation of papers by reference.

## PART IX.

### OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.  
Privileged will.

*Illustrations.*

(a.) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b.) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(c.) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d.) A a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e.) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f.) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and  
rules for executing, privi-  
leged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

*First.*—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

*Second.*—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

*Third.*—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

*Fourth.*—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

*Fifth.*—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

*Sixth.*—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

*Seventh.*—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.



## PART X.

## OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of  
 Effect of gift to attest- any benefit thereby given, either by way of bequest  
 ing witnesses, or by way of appointment, to any person attesting  
 it, or to his or her wife or husband :

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

*Explanation.*—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified  
 by interest or by being  
 executor.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

56. Every will shall be revoked by the marriage of the maker, except a  
 Revocation of will by will made in exercise of a power of appointment,  
 testator's marriage. when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

*Explanation.*—Where a man is invested with power to determine the  
 Power of appointment disposition of property of which he is not the owner,  
 defined. he is said to have power to appoint such property.

57. No unprivileged will or codicil, nor any part thereof, shall be  
 Revocation of unprivi- revoked otherwise than by marriage, or by another  
 leged will or codicil. will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

*Illustrations.*

(a) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have  
 Effect of obliteration, interlineation, or alteration in unprivileged will. any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses, be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

59. A privileged will or codicil may be revoked by the testator, by an  
 Revocation of privileged will or codicil. unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will,

or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention, of revoking the same.

*Explanation.*—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof, as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

## PART XI.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

### *Illustrations.*

(a) A, by his will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest ; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

63. Where the words used in the will to designate or describe a legatee, Misnomer or misdescription or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

*Illustrations.*

(a) A bequeaths a legacy "to Thomas, the second son, of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e) The testator having six grandchildren, makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A". At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied. 64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

*Illustration.*

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

*Illustrations.*

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zamindari of Rampur." He had an estate at Rampur, but it was a taluq and not a zamindari. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

*Explanation.*—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

*Illustrations.*

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L, as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence admissible in case of latent ambiguity. extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

*Illustrations.*

(a.) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

*Illustrations.*

(a.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(b.) A bequeaths 1,000 rupees to \_\_\_\_\_, leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B \_\_\_\_\_ rupees, or "his estate of \_\_\_\_\_." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Meaning of clause to be collected from entire will.

*Illustrations.*

(a.) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b.) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

*Illustrations.*

(a.) A testator gives to A "his farm in the occupation to B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c.) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

former is to be preferred.

No part rejected, if it can be reasonably construed.

Interpretation of words repeated in different parts of will.

appears an intention to the

Testator's intention to be effectuated as far as possible.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears the contrary.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

*Illustration.*

The testator by a will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C D.

The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

*Illustrations.*

(a.) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(b.) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

*Illustration.*

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

77. The description contained in a will, of property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power:

Power of appointment executed by general bequest.

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Implied gift to objects of power in default of appointment.

*Illustration.*

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next-of-kin," or a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Bequest to "heirs," &c., of particular person without qualifying terms.

*Illustrations.*

(a.) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c.) A leaves his property to B ; but if B dies before him, to B's next-of-kin : B dies before A ; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d.) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

### 81. Where a bequest is made to the "representatives," or "legal re-

Bequest to "representatives," &c., of particular person.

presentatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

#### *Illustration.*

A bequest is made to the "legal representative" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid : if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

### 82. Where property is bequeathed to any person, he is entitled to the

Bequest without words of limitation.

whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

### 83. Where property is bequeathed to a person, with a bequest in the

Bequest in alternative.

alternative to another person or to a class of persons ; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect ; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

#### *Illustrations.*

(a.) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b.) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c.) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d.) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e.) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f.) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g.) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

### 84. Where property is bequeathed to a person, and words are added

Effect of words describing a class added to bequest to a person.

which describe a class of persons, but do not devote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

*Illustrations.*

(a.) A bequest is made—

- to A and his children,
- to A and his children by his present wife,
- to A and his heirs,
- to A and the heirs of his body,
- to A and the heirs male of his body,
- to A and the heirs female of his body,
- to A and his issue,
- to A and his family,
- to A and his descendants,
- to A and his representatives,
- to A and his personal representatives,
- to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b.) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c.) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the persons under general description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree;

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

the words "cousins" or "first cousins," or "cousins-german" apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent, of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.



87. In the absence of any intimidation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputedly legitimate.

being such a relative.

#### Illustrations.

(a.) A, having three children, B, C and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b.) A, having a niece of illegitimate birth who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c.) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d.) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B are objects of the gift.

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88. Where a will purports to make two bequests to the same person

Rules of construction where will purports to make two bequests to same person.

and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in

determining the construction to be put upon the will :—

*First.*—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

*Second.*—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

*Third.*—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

*Fourth.*—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

*Explanation.*—In the four last rules, the word “will” does not include a codicil.

*Illustrations.*

(a.) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words “I bequeath my ten shares in the Bank of Bengal to B.” After other bequests, the will concludes with the words “and I bequeath my ten shares in the Bank of Bengal to B.” B is entitled simply to receive A’s ten shares in the Bank of Bengal.

(b.) A having one diamond-ring, which was given him by B, bequeathed to C the diamond-ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond-ring which was given him by B. C can claim nothing except the diamond-ring which was given to A by B.

(c.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e.) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f.) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g.) A, by his will, bequeaths “500 rupees to B because she was his nurse,” and in another part of the will bequeaths 500 rupees to B “because she went to England with his children.” B is entitled to receive 1,000.

(h.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution of residuary legatee.

*Illustrations.*

(a.) A makes her will, consisting of several testamentary papers, in one of which are contained the following words :—“I think there will be something left, after all funeral expenses &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to.” B is constituted residuary legatee.

(b.) A makes his will, with the following passage at the end of it :—“I believe there will be found sufficient in my banker’s hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure.” B is constituted the residuary legatee.

(c.) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which residuary legatee entitled.

*Illustration.*

A by his will bequeaths certain legacies, one of which is void under the hundred and fifth section and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

Time of vesting of legacy in general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

*Illustrations.*

(a.) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(b.) A bequest is made to A and his children. A dies before the testator or happens to be dead when the will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(e.) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

*Illustration.*

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect of words shewing testator's intention to give distinct shares.

*Illustration.*

A sum of money is bequeathed to A, B and C, to be equally divided among them A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

*Illustration.*

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child or other

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

*Illustration.*

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for benefit of B does not lapse by A's death.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

98. Where a bequest is made simply to a described class of persons.

Survivorship in case of the thing bequeathed shall go only to such as shall bequest to described class, be alive at the testator's death.

*Exception.*—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time latter than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

*Illustrations.*

(a.) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b.) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(c.) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d.) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died leaving D and F, surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e.) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and

after that event another sister E was born. C died during the life of B ; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(f.) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g.) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(h.) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

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## PART XII.

### OF VOID BEQUESTS.

Bequest to person by particular description, who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

*Exception.*—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise ; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead, to his representatives.

#### *Illustrations.*

(a.) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

(b.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son ; afterwards, during the life of B, a son named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d.) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest of C's eldest son is void.

(e.) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Request to person not in existence at testator's death, subject to prior bequest.

*Illustrations.*

(a.) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b.) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c.) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d.) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

*Illustrations.*

(a.) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(b.) A fund is bequeathed to A for his life ; and after his death to B for his life ; and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c.) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18 ; but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

#### *Illustrations.*

(a.) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest of A's children, therefore, is inoperative as to any child born after the testator's death ; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b.) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest under sections 100, 101 or 102.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

#### *Illustrations.*

[a.] A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

[b.] A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

104. A direction to accumulate the income arising from any property shall be void ; and the property shall be disposed of as if no accumulation had been directed.

*Exception.*—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death ;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

*Illustrations.*

(a.) The will directs that the sum of 10,000 rupees shall be invested in Government-securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c.) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d.) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e.) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B ; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority,

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

*Illustration.*

A having a nephew makes a bequest by a will not executed nor deposited as required—

for the relief of poor people ;  
 for the maintenance of sick soldiers ;  
 for the erection or support of a hospital ;  
 for the education and preferment of orphans ;  
 for the support of scholars ;  
 for the erection or support of a school ;  
 for the building and repairs of a bridge ;  
 for the making of roads ;  
 for the erection or support of a church ;  
 for the repairs of a church ;  
 for the benefit of ministers of religion ;  
 for the formation or support of a public garden ;  
 All these bequests are void.



## PART XIII.

## OF THE VESTING OF LEGACIES.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

Date of vesting of legacy when payment or possession postponed.

And in such cases the legacy is from the testator's death said to be vested in interest.

*Explanation.*—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

*Illustrations.*

[a.] A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

[b.] A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

[c.] A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

[d.] A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

[e.] A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

[f.] A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

Date of vesting when legacy contingent upon specified uncertain event.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

*Exception.*—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; under such bequest of the fund is not contingent.

*Illustrations.*

(a.) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(b.) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c.) An estate is bequeathed to A for life, and after his death to B, if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d.) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e.) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f.) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g.) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h.) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i.) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j.) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k.) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l.) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m.) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

*Illustration.*

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

## PART XIV.

## OF ONEROUS BEQUESTS.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

*Illustration.*

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and other refused.

*Illustration.*

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

## PART XV.

## OF CONTINGENT BEQUESTS.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Request contingent upon specified uncertain event, no time being mentioned for its occurrence.

*Illustrations.*

[a.] A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

[b.] A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

[c.] A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

[d.] A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

[e.] A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The word "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Request to such of certain persons as shall be surviving at some period not specified.

*Illustrations.*

[a.] Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

[b.] Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(c.) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d.) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

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## PART XVI.

### OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

*Illustrations.*

(a.) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b.) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

*Illustrations.*

[a.] A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

[b.] A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

*Illustrations.*

(a.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(d.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f.) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g.) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person and a bequest of the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

*Illustrations.*

(a.) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b.) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

*Illustration.*

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition super-added that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

*Illustrations.*

(a.) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b.) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c.) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d.) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e.) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

#### *Illustrations.*

(a.) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b.) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(c.) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

.. . :

#### *Illustrations.*

(a.) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b.) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c.) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

#### *Illustrations.*

(a.) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood ; he loses his life-interest in the estate.

(b.) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A, with a proviso that, if she becomes a Nun, she shall cease to have any interest in the estate. A becomes a Nun. She loses her interest under the will.

(e.) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a Nun, the bequest to her shall cease to have any effect. B becomes a Nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have

Such condition must not be invalid under section 107.

effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by

the one hundred and seventh section.

123. Where a bequest is made with a condition superadded that

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non-performance of which subject-matter to go over.

unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance

of the act required, the legacy shall go as if the legatee had died without performing such act.

#### *Illustrations.*

(a.) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b.) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee

Performance of condition, precedent or subsequent, within specified time.

within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-

matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified,

Further time in case of fraud.

unless the performance of it be prevented by fraud, in which case such further time shall be allowed as

shall be requisite to make up for the delay caused by such fraud.

## PART XVII.

### OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

*Illustration.*

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

123. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

no such direction.

*Illustrations.*

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried: the representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to

Bequest of fund for certain purposes, some of which cannot be fulfilled. sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

*Illustrations.*

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children: the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

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## PART XVIII.

### OF BEQUESTS TO AN EXECUTOR.

Legatee named as executor cannot take unless he shews intention to act as executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

*Illustration.*

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.



## PART XIX.

## OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

*Illustrations.*

(a.) A bequeaths to B—

- “the diamond-ring presented to him by C ;”
- “his gold chain :”
- “a certain bale of wool :”
- “a certain piece of cloth :”
- “all his household goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death :”
- “the sum of 1,000 rupees in a certain chest :”
- “the debt which B owes him :”
- “all his bills, bonds and securities belonging to him, lying in his lodgings in Calcutta :”
- “all his furniture in his house in Calcutta :”
- “all his goods on board a certain ship then lying in the river Hugli :”
- “2,000 rupees which he has in the hands of C :”
- “the money due to him on the bond of D :”
- “his mortgage on the Rampur factory :”
- “one-half of the money owing to him on his mortgage of Rampur factory :”
- “1,000 rupees, being part of a debt due to him from C :”
- “his capital stock of 1,000*l.* in East India Stock :”
- “his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan :”
- “all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company :”
- “all the wine which he may have in his cellar at the time of his death :”
- “such of his horses as B may select :”
- “all his shares in the Bank of Bengal :”
- “all the shares in the Bank of Bengal which he may possess at the time of his death :”
- “all the money which he has in the 5½ per cent. loan of the Government of India :”
- “all the Government-securities he shall be entitled to at the time of his decease.”

Each of these legacies is specific.

(b.) A having Government promissory notes for 10,000 rupees, bequeaths to his executors “Government promissory notes for 10,000 rupees in trust to sell” for the benefit of B.

The legacy is specific.

(c.) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(d.) A bequeaths to B—

- his houses in Calcutta :
- his zemindari of Rampur :
- his taluq of Ramnagar :
- his lease of the Indigo-factory of Salka :
- an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zemindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(e.) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(f.) A bequeaths a sum of money—  
 to buy a house in Calcutta for B :  
 to buy an estate in zila Faridpur for B :  
 to buy a diamond-ring for B :  
 to buy a horse for B :  
 to be invested in shares in the Bank of Bengal for B :  
 to be invested in Government securities for B.

A bequeaths to B—

“a diamond-ring :”  
 “a horse :”  
 “10,000 rupees worth of Government-securities :”  
 “an annuity of 500 rupees :”  
 “2,000 rupees, to be paid in cash :”  
 “so much money as will produce 5,000 rupees 4 per cent. Government-securities :”

These bequests are not specific.

(g.) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

Bequest of a certain sum where stocks, &c., in which invested are described.

130. Where a certain sum is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

§ Illustration.

A bequeaths to B—

“10,000 rupees of his funded property :”  
 “10,000 rupees of his property now invested in shares of the East Indian Railway Company :”  
 “10,000 rupees, at present secured by mortgage of Rampur factory.”

No one of these legacies is specific.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government-securities. A had at the date of the will five per cent. Government-securities for 5,000 rupees.

The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

**133.** Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles not deemed specifically bequeathed.

**134.** Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention, in form, of specific bequest to several persons in succession.

#### *Illustrations.*

(a.) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b.) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

**135.** Where property comprised in a bequest to two or more persons in succession, is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

#### *Illustration.*

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death, to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

**136.** If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

## PART XX.

### OF DEMONSTRATIVE LEGACIES.

**137.** Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

*Explanation.*—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific where the legacy is directed to be paid out of specified property it is demonstrative.

*Illustrations.*

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(b.) A bequeaths to B—

“ten bushels of the corn which shall grow in his field of Greenacre :”

“80 chests of the indigo which shall be made at his factory of Rampur :”

“10,000 rupees out of his five per cent. promissory notes of the Government of India :”

an annuity of 500 rupees “from his funded property :”

“1,000 rupees out of the sum of 2,000 rupees due to him by C.”

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Ramnagar.

A bequeaths to B—

“10,000 rupees out of his estate at Ramnagar,” or charges it on his estate at Ramnagar :

“10,000 rupees, being his share of the capital embarked in a certain business.”

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

*Illustration.*

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C: C is also to receive 500 rupees out of the general assets of the testator.

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## PART XXI.

### THE ADEMPMENT OF LEGACIES.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Ademption explained.

*Illustrations.*

(a.) A bequeaths to B—

“the diamond-ring presented to him by C :”

“his gold chain :”

“a certain bale of wool :”

“a certain piece of cloth :”

“all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death.”

A, in his lifetime,  
 sells or gives away the ring :  
 converts the chain into a cup :  
 converts the wool into cloth :  
 makes the cloth into a garment :  
 takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(b.) A bequeaths to B—  
 “the sum of 1,000 rupees in a certain chest :”  
 “all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable.  
 The legacies are adeemed.

(c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.  
 The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of death of the testator, or has been converted into property of a different kind ; but it shall in such case be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.  
 Ademption of specific bequest of right to receive something from third party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

*Illustrations.*

(a.) A bequeaths to B—  
 “the debt which C owes him :”  
 “2,000 rupees which he has in the hands of D :”  
 “the money due to him on the bond of E :”  
 “his mortgage on the Rampur factory.”

All these debts are extinguished in A’s lifetime, some with and some without his consent.

All the legacies are adeemed.

(b.) A bequeaths to B—  
 “his interest in certain policies of life assurance.”

A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption *pro tanto* by testator’s receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

*Illustration.*

A bequeaths to B “the debt due to him by C.” The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received ; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator’s receipt of portion of entire fund or stock specifically bequeathed.  
 Ademption *pro tanto* by testator’s receipt of portion of entire fund or stock specifically bequeathed.  
 Ademption *pro tanto* by testator’s receipt of portion of entire fund or stock specifically bequeathed.

*Illustration.*

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

**144.** Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

demonstrative legacy shall be paid out of the general assets of the testator.

*Illustration.*

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt, due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

**145.** Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

*Illustration.*

A bequeaths to B—

“his capital stock of 1,000*l.* in East India Stock :”

“his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan.”

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

**146.** Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

*Illustration.*

A bequeaths to B—

“his 10,000 rupees in the 5½ per cent. loan of the Government of India.”

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

**147.** A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

*Illustrations.*

A bequeaths to B “all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

*Illustrations.*

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption ;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

*Illustration.*

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

*Illustrations.*

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000l., invested in Consols in the names of trustees for A.

The sum of 2,000l. is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

*Illustration.*

A bequeaths to B "all his 3 per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

## PART XXII.

### OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the will, the legatee, if he accept the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

Non-liability of executor to exonerate specific legacies.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

*Explanation.*—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

*Illustrations.*

(a.) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b.) A bequeaths to B a zamindari, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

*Illustrations.*

(a.) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.



(b.) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

*Illustration.*

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

*Illustrations.*

(a.) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b.) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c.) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d.) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e.) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

## PART XXIII.

### OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

*Illustrations.*

(a.) A bequeaths to B a pair of carriage-horses, or a diamond-ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(b.) A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

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## PART XXIV.

### OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

*Illustrations.*

(a.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his  $5\frac{1}{2}$  per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(c.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

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## PART XXV.

### OF BEQUESTS OF ANNUITIES.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

*Illustrations.*

(a.) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

*Illustrations.*

(a.) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

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## PART XXVI.

### OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

165. Where a parent who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

*Illustration.*

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

*Illustrations.*

(a.) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

## PART XXVII.

## OF ELECTION.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

*Illustrations.*

(a.) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

*Illustration.*

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

*Illustration.*

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to

take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity under will, may in other character elect to take in opposition.

172. A person who in his individual capacity takes a benefit under the will, may in another character elect to take in opposition to the will.

*Illustration.*

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

*Exception to the six last Rules.*—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

*Illustration.*

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life.

A by his will bequeaths to his wife an annuity of 2,000*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

*Illustrations.*

(a.) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b.) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B, having been informed by A's executors that residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any Confirmation of bequest act of the legatee which renders it impossible to by act of legatee, place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

*Illustration.*

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

## PART XXVIII.

### OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, deliver to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable. Such a gift may be resumed by the giver.

When it fails. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

*Illustrations.*

(a.) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch :

a bond granted by C to A :

a bank-note :

a promissory note of the Government of India endorsed in blank :

a bill of exchange endorsed in blank :

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch :

the debt secured by C's bond :

the bank-note :

the promissory note of the Government of India :

the bill of exchange :

the money secured by the mortgage-deeds.

(b.) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

## PART XXIX..

### OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

181. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

182. The appointment may be express or by necessary implication.

Appointment express or implied.

#### *Illustrations.*

(a.) A wills that C be his executor if B will not; B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Persons to whom probate cannot be granted.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Grant of probate to several executors simultaneously or at different times.

#### *Illustration.*

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one-hundred and eightieth section.

Right as executor or legatee when established.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

To whom administration may not be granted.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Right to intestate's property when established.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship ;

Grant of administration where executor has not renounced.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.



195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

196. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased ;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

201. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

#### *Illustrations.*

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate ; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband ; this is not good cause for her exclusion.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate ;

provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

204. Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

### PART XXX.

#### OF LIMITED GRANTS.

##### • • (a) *Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

209. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

210. When the will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it, be produced.

(b.)—*Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed, to attorney of absent executor.

213. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his attorney, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration for use and benefit of lunatic *jus habens*.

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration *pendente lite*.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c.) *For Special Purposes.*

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the administration with the will annexed limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

223. If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate, or any part thereof, other than

the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.) *Grants with Exception.*

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted, subject to such exception.

(e.) *Grants of the Rest.*

228. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.) *Grants of Effects unadministered.*

229. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g.) *Alteration in Grants.*

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

*(h.) Revocation of Grants.*

Revocation or annulment for just cause.  
"Just cause."

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

*Explanation.*—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances.

5th, \*that a person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part 34 of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.

*Illustrations.*

- (a) The Court by which the grant was made had no jurisdiction.
- (b) The grant was made without citing parties who ought to have been cited.
- (c) The will of which probate was obtained was forged or revoked.
- (d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (f) Since probate was granted, a later will has been discovered.
- (g) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.
- (h) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

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## PART XXXI.

### OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTES OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.,

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

235A.† The High Court may, from time to time, appoint such judicial officers within any district as it think fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe.

Power to appoint Delegates of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called 'District Delegates.'

**236.** The district Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

**237.** The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same,

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

**238.** The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

**239.** Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage ; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

**240.** Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

241A.\* Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immovable, of the deceased, throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

+ Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

242A.† Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar or such other officer as the High Court making the grant appoints in this behalf shall send to each of the other High Courts a certificate to the following effect:—

I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the                      day of                      187                      the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of                      deceased, to E. F. of                      and G. H. of                      , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the High Court receiving the same.

\* Act VI of 1851

† Sec. 2, Act XIII of 1875

‡ Sec. 3, Act XIII of 1875.



243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed, and

that the petitioner is the executor therein named;

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge.

\*and when the application is to a District Delegate the petition shall state that the deceased at the time of his death resided within the jurisdiction of such Delegate.

245. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition, by a translator of the Court, if the language be one for which a translator is appointed; or if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge \* or District Delegate to whom the application is made, and

the amount of assets, which are likely to come to the petitioner's hands,

\*and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.

246A.\* Every person applying to a High Court for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :--

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner to the effect following :--

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

250. In all cases it shall be lawful for the District Judge or District Delegate if he shall think proper,

\* Act VI of 1861.

+ Sec. 4. Act XIII of 1875.

to examine the petitioner in person, upon oath or solemn affirmation, and also

require further evidence, to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings, to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

251.\* Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

252. The caveat shall be to the following effect:—

Form of caveat. "Let nothing be done in the matter of the estate of A. B., late of \_\_\_\_\_ deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ without notice to C. D. of \_\_\_\_\_"

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge \* or officer to whom the application has been made \* or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

\* 253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

*Explanation.*—By contention is understood the appearance of any one in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

\*253B. In every case in which there is no contention, but it appears to

Power to transmit statement to District Judge in doubtful cases where no contention.

the District Delegate doubtful whether the probate or letters of administration, should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he think proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

\*253C. In every case in which there is contention, or the District

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

254. When it shall appear to the Judge or District Delegate that

Grant of probate to be under seal of Court.

probate of a will should be granted, he will grant the same under the seal of his Court in manner following :—

"I, Judge of the District of (or Delegate appointed for

Form of such grant.

granting probate or letters of administration in [here insert the limits of the Delegate's jurisdiction]) hereby make known that on the day of in the year the last will of late of, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to the executor in the said will named, he† having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the said date or within such further time as the Court may from time to time appoint."

255. And wherever it shall appear to the District Judge or District

Grant of letters of administration to be under seal of Court.

Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following :—

"I, Judge of the District of (or Delegate

Form of such grant.

appointed for granting probate or letters of administration in [here insert the limits of the Delegate's jurisdiction]) hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of, late of, deceased, were granted to, the father (or as the case may be) of the deceased,

\* Act VI of 1881.

† Act. VI of 1889,

he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

256. Every person to whom any grant of letters\* of administration is committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge

**Administration-bond.** for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into

**Assignment of administration-bond.**

Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

**Time for grant of probate and administration.**

259. Every District Judge † or district Delegate shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him among the records of his Court, until some public registry for wills is established; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

**Filing of original wills of which probate or administration with will annexed.**

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

**Grantee of probate or administration alone to sue, &c., until same revoked.**

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and person who may have appeared as aforesaid to oppose the grant shall be the defendant.

**Procedure in contentious cases.**

262. Where any probate is or letters of administration are revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

**Payment to executor or administrator before probate or administration revoked.**

\* Act VI of 1881.  
† Act VI of 1868.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain Right of such executor or administrator to recoup himself. and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

## PART XXXII.

### OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or Executor of his own does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

*Exceptions.* First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

#### *Illustrations.*

(a.) A sues or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

## PART XXXIII.

### OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

**268.** All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

*Demands and right of action of or against deceased, survive to and against executor or administrator.*

personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

*Illustrations.*

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

*Power of executor or administrator to dispose of property.*

**269.** An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

*Illustrations.*

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

**270.** If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

*Purchase by executor or administrator of deceased's property.*

**271.** When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

*Powers of several executors or administrators, exercisable by one.*

*Illustrations.*

(a.) One of several executors has power to release a debt due to the deceased,

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, moveable or immoveable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to deceased.

(f.) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

*Survival of powers on death of one of several executors or administrators.*

**272.** Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

**273.** The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

*Powers of administrator of effects unadministered.*

*Powers of administrator during minority.*

**274.** An administrator during minority has all the powers of an ordinary administrator.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

## CHAPTER XXXIV.

### OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

\* 277. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

Inventory and account.

"(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

"(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

"(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code."

277A.\* In all cases where† a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or administrator, to the effects of any person dying in British India and leaving property in more than one Province shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the Provinces:

Inventory to include property in any part of British India.

And the value of such property situate in the said Provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and

Expenses to be paid before all debts.

\* Section 5, Act XIII of 1875.

† Act VI of 1889.



board and lodging for one month previous to his death, are to be paid before all debts.

**280.** The expenses of obtaining probate of letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

**281.** Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased.

**282.** Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Application of moveable property to payment of debts, where domicile not in British India.

**283.** If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of British India.\*

**284.** No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

#### *Illustration.*

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

**285.** Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

**286.** If the estate of deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

**287.** If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions.

Abatement of general legacies.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy, when assets sufficient to pay debts.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Reteable abatement of specific legacies.

#### *Illustration.*

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

### PART XXXV.

#### OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

#### *Illustrations.*

(a.) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

*Illustrations.*

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

*Illustrations.*

(a.) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

*Illustration.*

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent. 296. The assent of the executor to a legacy gives effect to it from the death of the testator.

*Illustrations.*

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies. 297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

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## PART XXXVI.

### OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

*Commencement of annuity when no time fixed by will.*

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

*When annuity, to be paid quarterly or monthly, first falls due.*

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

*Dates of successive payments when first payment directed to be made within given time, or on day certain.*

*Apportionment where annuitant dies between times of payment.*

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## PART XXXVII.

### OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

*Investment of sum bequeathed where legacy, not specific, given for life.*

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

*Investment of general legacy, to be paid at future time.*

*Intermediate interest.*

The intermediate interest shall form part of the residue of the testator's estate.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

*Procedure when no fund is charged with, or appropriated to, annuity.*

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

**304.** Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

*Transfer to residuary legatee of contingent bequest.*

**305.** Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

*Investment of residue bequeathed for life, without direction to invest in particular securities.*

**306.** Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

*Investment of residue bequeathed for life, with direction to invest in specified securities.*

**307.** Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

*Time and manner of conversion and investment.*

and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

*Interest payable until investment.*

**308.** Where by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no discretion in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards;

*Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.*

and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money when paid in shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit as the Judge or the Court of Wards, as the case may be, may direct.

## PART XXXVIII.

## OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

*Exception.*—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate

*Illustrations.*

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by this executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

*Exception.*—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

*Illustrations.*

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

*Exceptions.*—(1) Where the legacy, is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.  
from the time so fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run

The interest up to such time forms part of the residue of the testator's estate.

*Exception.*—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

**Rate of interest.** 313. The rate of interest shall be four per cent. per annum.

**314. No interest** is payable on the arrears of an annuity within the first year from the death of the testator, although  
**No interest on arrears of annuity within first year after testator's death.** a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

**315. Where a sum of money is directed to be invested to produce** an annuity, interest is payable on it from the death  
**Interest on sum to be invested to produce annuity.** of the testator.

## PART XXXIX.

### OF THE REFUNDING OF LEGACIES.

**316. When an executor has paid a legacy under the order of a Judge** he is entitled to call upon the legatee to refund, in  
**Refund of legacy paid under Judge's orders.** the event of the assets proving insufficient to pay all the legacies.

**317. When an executor has voluntarily paid a legacy, he cannot call** upon a legatee to refund, in the event of the assets  
**No refund if paid voluntarily.** proving insufficient to pay all the legacies.

**318. When the time prescribed by the will for the performance of a** condition has elapsed, without the condition having  
**Refund when legacy become due on performance of condition within further time allowed under section 124.** been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

**319. When the executor has paid away the assets in legacies, and he** is afterwards obliged to discharge a debt of which  
**When each legatee compellable to refund in proportion.** he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

**320. Where an executor or administrator has given such notices as** would have been given by the High Court in an  
**Distribution of assets.** administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets,

321. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.\*

Within what period creditor may call upon legatee to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last proceeding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

#### *Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

\* 325. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

† 326A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator as the case may be, in British India, after having given such notices as are mentioned in section 320 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

\* Section 2, Act XV of 1877,  
† Act II of 1890.



## PART XL.

## OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

*Illustrations.*

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

328. When an executor or administrator occasions a loss to the estate

For neglect to get in any part of property. by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

*Illustrations.*

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

## PART XLI.

## MISCELLANEOUS.

329.—*Repealed by Section 2, Act VII of 1870.*

330.—*Repealed by Section 2, Act XXIV of 1867.*

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist; nor shall they apply to any will made, or any intestacy occurring, before the first day of January, 1866.

The 4th section shall not apply to any marriage contracted before the same day.

332. The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe in British India or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

Power of Governor General to exempt any race, sect or tribe in British India from operation of Act.

\* 333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of revoked probate or letters of administration.

"(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both."

The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

SCHEDULE.—[*Repealed by Act No. VII of 1870.*]

## ACT NO. XXI OF 1870.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 19th July 1870),*

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AN Act to regulate the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; it is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Hindu Wills Act, 1870."

Certain portions of Succession Act extended to wills of Hindus, Jainas, Sikhs and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),

sections one hundred and six to one hundred and seventy-seven (both inclusive), and section 187.

\*

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\*

(a.) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after first day of September one

Extent of Act.

thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b.) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situate within those territories or limits :

Provisos.

3. Provided that marriage shall not revoke any such will or codicil :

And that nothing herein contained shall authorise a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section two of this Act, he could not deprive them by will :

And that nothing herein contained shall affect any law of adoption or intestate succession :

And that nothing herein contained shall authorise any Hindu, Jaina, Sikh or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

4. On and from that day, section two of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Partial repeal of Bengal Regulation V of 1799, section 2.

Saving of rights of Administrator General.

5. Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay, respectively.

6. In this Act in the said sections and Parts of the Indian Succession Interpretation-clause. Act, all words defined in section three of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively :

And in applying sections sixty-two, sixty-three, ninety-two, ninety-six, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, and one hundred and three of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child ; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born ; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.

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\* Repealed by Section 154, Act V of 1881.

# THE INDIAN EVIDENCE ACT, 1872.

## CONTENTS.

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### PART I.

#### Relevancy of Facts.

	SECTIONS.
CHAPTER I—PRELIMINARY ... ..	1-4
CHAPTER II—OF THE RELEVANCY OF FACTS ... ..	5-16
ADMISSIONS ... ..	17-31
STATEMENT BY PERSONS WHO CANNOT BE CALLED AS WITNESSES	32-33
STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES ...	34-38
HOW MUCH OF A STATEMENT IS TO BE PROVED ... ..	39
JUDGMENTS OF COURTS OF JUSTICE, WHEN RELEVANT ...	40-44
OPINIONS OF THIRD PERSONS, WHEN RELEVANT ... ..	45-51
CHARACTER WHEN RELEVANT ... ..	52-55

### PART II.

#### On Proof.

CHAPTER III—FACTS WHICH NEED NOT BE PROVED ...	56-58
CHAPTER IV—OF ORAL EVIDENCE ... ..	59-60
CHAPTER V—OF DOCUMENTARY EVIDENCE ... ..	61-73
PUBLIC DOCUMENTS ... ..	74-78
PRESUMPTIONS AS TO DOCUMENTS ... ..	79-90
CHAPTER VI—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE ... ..	91-100

### PART III.

#### Production and Effect of Evidence.

CHAPTER VII—OF THE BURDEN OF PROOF ... ..	101-114
CHAPTER VIII—ESTOPPEL ... ..	115-117
CHAPTER IX—OF WITNESSES ... ..	118-134
CHAPTER X—OF THE EXAMINATION OF WITNESSES ...	135-166
CHAPTER XI—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE ... ..	167



THE  
INDIAN EVIDENCE ACT

BEING  
ACT NO. I OF 1872.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.  
(Received the assent of the Governor General on the 15th March 1872.)

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Preamble.                      WHEREAS it is expedient to consolidate, define  
and amend the law of Evidence; it is hereby enacted as follows:—

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PART I.  
Relevancy of Facts.

CHAPTER I.

PRELIMINARY.

- Short title.                      1. This Act may be called "The Indian Evidence Act, 1872."
- Extent.                          It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-Martial, but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator;
- Commencement of Act.                      and it shall come into force on the 1st day of September, 1872.
- Repeal of enactments.                      2. On and from that day the following laws shall be repealed:—
- (1.) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;
- (2.) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils Act, 1861,' in so far as they relate to any matter herein provided for; and
- (3.) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.
- But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

**Interpretation-clause.** 3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

“Court.” “Court” includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

“Fact.” “Fact” means and includes—

(1) any thing, state of things or relation of things, capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious,

*Illustrations.*

(a.) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b.) That a man heard or saw something is a fact.

(c.) That a man said certain words is a fact.

(d.) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“Relevant.”

“Facts in issue.” The expression “facts in issue” means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

*Explanation.*—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

*Illustrations.*

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was by reason, of unsoundness of mind, incapable of knowing its nature.

“Document” means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

“Document.”

*Illustrations.*

A writing is a document ;

Words printed, lithographed or photographed are documents ;

A map or plan is a document ;

An inscription on a metal plate or stone is a document ;

A caricature is a document.

“Evidence.”

“Evidence” means and includes—

(1) all statement which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;  
such statements are called oral evidence :

(2) all documents produced for the inspection of the Court ;  
such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Proved.”

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Disproved.”

A fact is said not to be proved when it is neither proved nor disproved.

“Not proved.”

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it :

“May presume.”

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved :

“Shall presume.”

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

“Conclusive proof.”

## CHAPTER II.

### OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of others.

*Explanation.*—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

#### *Illustrations.*

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death.



(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.

Relevancy of facts forming part of same transaction.

*Illustrations.*

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which are occasion, cause, or effect of facts in issue.

*Illustrations.*

(a.) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he shewed it, or mentioned the fact that he had it, to third persons, are relevant.

(b.) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive, preparation and previous or subsequent conduct.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

*Explanation. 1.*—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements ; but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation. 2.*—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

*Illustrations.*

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate ; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—“the police are coming to look for the man who robbed B,” and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—“I advise you not to trust A, for he owes B 10,000 rupees,” and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after a commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section thirty-two, clause (one) or as corroborative evidence under section one hundred and fifty-seven.

(k.) The question is whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or

as corroborative evidence under section one hundred and fifty-seven.

#### 9. Facts necessary to explain or introduce a fact in issue or relevant

Facts necessary to explain or introduce relevant facts, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

#### *Illustrations.*

(a.) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it,—A says 'you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

*Illustrations.*

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen..

The facts that B procured arms in Europe for purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—  
(1) if they are inconsistent with any fact in issue or relevant fact ;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

*Illustrations.*

(a.) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as the existence of any right or custom, the following facts are relevant—

(a.) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence :

(b.) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

*Illustration.*

The question is, whether A has a right to fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

*Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

\* *Explanation 2.*—But where, upon the trial of a person accused of an offence the previous Commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact."

*Illustrations.*

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he is in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

\* The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that, C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing, that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The facts that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is relevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

Facts bearing on question whether act was accidental or intentional. 15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

#### *Illustrations.*

(a.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

#### *Illustrations.*

(a.) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

#### ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact, in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admission-by party to proceeding or his agent;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

by suitor in representative character;

Statements made by—

by party interested in subject-matter; (1.) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived. (2.) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

### 19. Statements made by persons whose position or liability it is neces-

Admissions by persons whose position must be proved as against party to suit.

sary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

#### *Illustration.*

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

### 20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

#### *Illustration.*

The question is whether a horse sold by A to B is sound.

A says to B—'Go and ask C, C knows all about it.' C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases—

(1.) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section thirty-two.

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

#### *Illustrations.*

(a.) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by A that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b.) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section thirty-two, clause (two.)

(c.) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.



The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (two).

(d.) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not relevant,

When oral admissions as to contents of documents are relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either upon an

Admissions in civil cases, when relevant, express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

*Explanation.*—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section one hundred and twenty-six. \*

24. A confession made by an accused person is irrelevant in a criminal

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding, to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature, in reference to the proceedings against him.

Confession to Police officer not to be proved. 25. No confession made to a Police officer, shall be proved as against a person accused of any offence.

Confession by accused while in custody of Police not to be proved against him. 26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

\* *Explanation.*—In this section 'Magistrate' does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burmah or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.

27. Provided that, when any fact is discovered to as discovered in conse-

How much of information received from accused may be proved. quence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant not to become irrelevant because of promise of secrecy, &c.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

well as against the person who makes confession.

\*“*Explanation.*—‘Offence’ as used in this section includes the abatement of, or attempt to commit, the offence.”

*Illustrations.*

(a.) A and B are jointly tried for the murder of C. It is proved that A said,—‘B and I murdered C’. The Court may consider the effect of this confession as against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—‘A and I murdered C.’

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not conclusive proof, but may stop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, is unreasonable, are themselves relevant facts in the following cases :—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in case in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of

money, goods, securities or property of any kind ; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3) When the statement is against the pecuniary or proprietary interest or against interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public right or custom, or of public or general interest, of the existence of which, if it existed, he would have been likely to be aware and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) When the statement relates to the existence of any relationship by blood, marriage or adoption\* between persons as to whose relationship the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relationship by blood, marriage or adoption\* between persons or is made in will or deed relating to family affairs ; deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) When statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section thirteen, clause (a.)

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

#### *Illustrations.*

(a.) The question is, whether A was murdered by B ; or

A dies of injuries received in a transaction in the course of which she was ravished.

The question is, whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain whose attendance cannot be procured, is a relevant fact.

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant

for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or of his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

#### STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34. Entries in books of account, regularly kept in the course of busi-

ness, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

#### *Illustration.*

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record

stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in published

maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any

fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the *Gazette* of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country,

any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

#### HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms part of a

longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation,

document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

#### JUDGMENTS OF COURTS OF JUSTICE, WHEN RELEVANT.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree\* declares it to have accrued to that person ;

that any legal character, which it takes away from any such person ceased at the time from which such judgment declared that it had ceased or should cease ;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment order or decree\* declares that it had been or should be his property.

42. Judgments, orders or decrees other than those mentioned in section forty-one, are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

#### *Illustration.*

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders or decrees, other than those mentioned in sections forty, forty-one and forty-two, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

#### *Illustrations.*

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be rebellious is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts A of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

\*“(e.) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.”

“(f.) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.”

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section forty, forty-one or forty-two and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

#### OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to identity of handwriting\* are relevant facts.

Such persons are called experts.

##### *Illustrations.*

(a.) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong and contrary to law.

The opinions of experts upon the question whether the systems exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

46. Facts, not otherwise relevant, are relevant, if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Facts bearing upon opinions of experts.

##### *Illustrations.*

(1.) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom

Opinion as to handwriting—any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

*Explanation.*—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

*Illustration.*

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of

Opinion as to existence of right or custom, when relevant. any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

*Explanation.*—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

*Illustration.*

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant. 49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,  
the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the relationship of

Opinion on relationship, when relevant. one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :



Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven or four hundred and ninety-eight of the Indian Penal Code.

*Illustration.*

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is whether A was the legitimate son of B.

The fact that A was always treated as such by members of the family, is relevant.

51. Whenever the opinion of any living person is relevant, the Grounds of opinion, grounds on which such opinion is based are also when relevant, relevant.

*Illustration.*

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed irrelevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

\* "54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

"*Explanation 1.*—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

"*Explanation 2.*—A previous conviction is relevant as evidence of bad character."

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

*Explanation.*—In sections fifty-two, fifty-three, fifty-four and fifty-five, the word 'character' includes both reputation and disposition; but except as provided in section 54 evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

## PART II.

### On proof.

#### CHAPTER III.

##### FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice. 57. The Court shall take judicial notice of the following facts:—

(1) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India :

(2) All public Acts passed or hereafter to be passed by parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of War of her Majesty's Army or Navy :

(4) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto :

*Explanation.*—The word 'Parliament,' in clauses (two) and (four), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;

2. The Parliament of Great Britain ;

3. The Parliament of England ;

4. The Parliament of Scotland, and

5. The Parliament of Ireland :

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6) All seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any local Government in Council : the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by any Act of Parliament or other Act of Regulation having the force of law in British India :

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government ;

(8) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

(9) The division of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette :

(10) The territories under the dominion of the British Crown :

(11) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) The rule of the road, on land or at sea.\*

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings : Provided that the Court may, in its discretion ; require the facts admitted to be proved otherwise than by such admissions.

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## CHAPTER IV.

### OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases, whatever, be direct ; That is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner ;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

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## CHAPTER V.

### OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

*Explanation 1.*—Where a document is executed in several parts, each part is primary evidence of the document :

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

*Explanation 2.*—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

*Illustration.*

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1.) Certified copies given under the provisions hereinafter contained;
- (2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3.) Copies made from or compared with the original;
- (4.) Counterparts of documents as against the parties who did not execute them;
- (5.) Oral accounts of the contents of a document given by some person who has himself seen it.

*Illustrations.*

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

- (a) When the original is shown or appears to be in the possession or power
  - of the person against whom the document is sought to be proved, or
  - of any person out of reach of, or not subject to, the process of the Court, or
  - of any person legally bound to produce it,
  - and when, after the notice mentioned in section sixty-six, such person does not produce it;

(b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;

(c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(d) When the original is of such a nature as not to be easily moveable ;

(e) When the original is a public document within the meaning of section seventy-four ;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;

(g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d) any secondary evidence of the contents of the documents is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.\*

66. Secondary evidence of the contents of the documents referred to in section sixty-five, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is or to his attorney or pleader\* such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

- (1) When the document to be proved is itself a notice ;
- (2) When, from the nature of the case, the adverse party must know that he will be required to produce it ;
- (3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;
- (4) When the adverse party or his agent has the original in Court ;
- (5) When the adverse party or his agent has admitted the loss of the document ;
- (6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

**67.** If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's hand-writing must be proved to be in his hand-writing.

Proof of signature and handwriting of person alleged to have signed or written document produced.

**68.** If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof of execution of document required by law to be attested.

**69.** If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand-writing of that person.

Proof where no attesting witness found.

**70.** The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

Proof when attesting witness denies the execution.

**71.** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

**72.** An attested document not required by law to be attested may be proved as if it was unattested.

**73.** In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

Comparison of signature, writing or seal with others admitted or proved.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

#### PUBLIC DOCUMENTS.

**74.** The following documents are public documents :—

Public documents.

1. Documents forming the acts, or records of the acts—
  - (i) of the sovereign authority,
  - (ii) of official bodies and tribunals, and
  - (iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

**75.** All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.

*Explanation.*—Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4) The acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council:

(5) The proceedings of a municipal body in British India,

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

## PRESUMPTION AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorised thereto by the Governor General in Council, to be genuine : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, of the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, is such document is kept substantially in the form required by law and is produced from proper custody.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate ; but maps or plans made for the purpose of any cause must be proved to be accurate.



84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed or authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

"An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3 of the Foreign Jurisdiction and Extradition Act, 1879, and section 190 of the Code of Criminal Procedure, 1882, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place."

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, maps and charts, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time, and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, correspond with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption, as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document, called for and not produced after notice to produce was attested, stamped and executed in the manner required by law.

90. Where any document, purporting or proved to be 30 years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

*Explanation.*—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

*Illustrations.*

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

## CHAPTER VI.

## OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant or of any other dis-  
 Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. position of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provision herein before contained.

*Exception 1.*—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

*Exception 2.*—Wills admitted to probate in British India\* may be proved by the probate.

*Explanation. 1.*—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

*Explanation 2.*—Where there are more originals than one, one original only need be proved.

*Explanation 3.*—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

*Illustrations.*

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

*Exclusion of evidence of oral agreement.*

*Proviso (1)*—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

*Proviso (2)*—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

*Proviso (3)*—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

*Proviso (4)*—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

*Proviso (5)*—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

*Proviso (6)*—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

#### *Illustrations.*

(a) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that this particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay w Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called 'the Rampur tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with w to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against w for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. A sues B for the price. A may show that the goods were supplied on credit for a term still unexpired.

g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words : 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

h) A hires lodging of w, and gives w a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

### 93. When the language used in a document is, on its face, ambiguous

Exclusion of evidence to explain or amend ambiguous document. or defective, evidence may not be given of facts which would show its meaning or supply its defects.

#### *Illustrations.*

(a) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1500'.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

### 94. When language used in a document is plain in itself, and when

Exclusion of evidence against application of document to existing facts. it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

#### *Illustration.*

A sells to B, by deed, 'my estate at Rampur containing 100 bighas.' A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

### 95. When language used in a document is plain in itself, but is un-

Evidence as to document unmeaning in reference to existing facts. meaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

#### *Illustration.*

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

### 96. When the facts are such that the language used might have

Evidence as to application of language which can apply to one only of several persons. been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

*Illustrations.*

(a) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(d) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sindh was meant.

**Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.**

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

*Illustration.*

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

**Evidence as to meaning of illegible characters, &c.**

*Illustration.*

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

**Who may give evidence of agreement varying terms of document.**

*Illustration.*

A and B make a contract in writing that B shall sell a certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

**Saving of provisions of Indian Succession Act relating to wills.**

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## PART III.

### Production and effect of Evidence.

#### CHAPTER VII.

##### OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

**Burden of proof.**

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

*Illustrations.*

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that

On whom burden of person who would fail if no evidence at all were given on either side.

*Illustrations.*

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that

person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

*Illustration.*

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in

order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

*Illustrations.*

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving

the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

*Illustrations.*

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the fact.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

*Illustrations.*

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. \*Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted\* to the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence

Proof of good faith in transactions where one part is in relation of active confidence.

*Illustrations.*

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of Birth during marriage, a valid marriage between his mother and any man, conclusive proof of legitimacy, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

*Illustrations.*

The Court may presume—

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(c) That a bill of exchange, accepted, or endorsed, was accepted or endorsed for good consideration ;

(d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;

(e) That judicial and official acts have been regularly performed ;

(f) That the common course of business has been followed in particular cases ;

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

As to illustration (a)— A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :



As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

As to illustration (b)—A crime is committed by several persons. A, B and C, three of the criminals are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances :

As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

## CHAPTER VIII.

### ESTOPPEL.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

#### *Illustration.*

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property ; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given,

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

*Explanation (1)*—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

*Explanation (2)*—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

## CHAPTER IX.

### OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

*Explanation.*—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

#### *Illustrations.*

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a Police officer whilst on this trial before B, a Sessions Judge. B may be examined as to what occurred.

**122.** No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

**123.** No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

**124.** No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

**125.** No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence, and Revenue Officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

*Explanation.*—Revenue officer in this section means any officer employed in or about the business of any branch of the public revenue.\*

**126.** No barrister, attorney, pleader or vakil, shall at any time be permitted unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal† purpose ;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader† attorney or vakil was or was not directed to such fact by or on behalf on his client.

*Explanation.*—The obligation stated in this section continues after the employment has ceased.

#### *Illustrations.*

(a). A, a client, says to B, an attorney—‘I have committed forgery, and I wish you to defend me.’

\* Section 1, Act III of 1887.

† Act XVIII of 1872.

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—‘ I wish to obtain possession of property by the use of a forged deed on which I requested you to sue.’

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A’s account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six ; and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

**Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.**

Proviso.

**133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.**

Accomplice.

**134. No particular number of witnesses shall in any case be required for the proof of any fact.**

Number of witnesses.

## CHAPTER X.

### OF THE EXAMINATION OF WITNESSES.

**135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.**

Order of production and examination of witnesses.

**136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.**

Judge to decide as to admissibility of evidence.

**If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.**

**If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.**

#### *Illustrations.*

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

**Examination in-chief.** 137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

**Cross-examination.** The examination of a witness by the adverse party shall be called his cross-examination.

**Re examination.** The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

**Order of examinations.** 138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.  
**Direction of re-examination.**

The examination and cross-examination must relate to relevant facts; but the cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

**Cross-examination of person called to produce a document.** 139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

**Witnesses to character.** 140. Witnesses to character may be cross-examined and re-examined.

**Leading questions.** 141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

**When they must not be asked.** 142. Leading questions must not, if objected to by the adverse party be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion been already sufficiently proved.

**When they may be asked.** 143. Leading questions may be asked in cross-examination.

**Evidence as to matters in writing.** 144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

**Explanation.**—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

*Illustration.*

The question is, whether A assaulted B.

C deposes that he heard A say to D—‘ B wrote a letter accusing me of theft, and I will be revenged on him.’ This statement is relevant, as showing A’s motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and cross-examination as to previous statements in writing. relevant to matters in question without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked Questions lawful in cross-examination. any questions which tend—

- (1) to test his veracity;
- (2) to discover who is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide when question shall be asked and when witness compelled to answer. shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness’s character and the importance of his evidence:

(4) The Court may, if it sees fit, draw, from the witness’s refusal to answer, the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

*Illustrations.*

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Procedure of Court in case of question being asked without reasonable grounds.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Questions intended to insult or annoy.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusion of evidence to contradict answers to questions testing veracity.

*Exception. 1.*—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

*Exception. 2.*—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

*Illustrations.*

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.



(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The Evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with consent of the Court, by the party who calls him:—

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) By proof that the witness has been bribed, or has accepted\* the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

*Explanation.*—A witness declaring another witness' to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

#### *Illustrations.*

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

*Illustration.*

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to, and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157 In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement, relevant under section thirty-two or thirty-three, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

*Illustration.*

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

*Right of adverse party as to writing used to refresh memory.*

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

*Production of documents.*

The Court, if he sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

*Translation of documents.*

163. When a party calls a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

*Giving, as evidence, of document called for and produced on notice.*

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party or the order of the Court.

*Using, as evidence, of document production of which was refused on notice.*

#### *Illustration.*

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

*Judge's power to put questions or order production.*

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under sections one hundred and forty-eight or

one hundred and forty-nine ; nor shall he dispense with primary evidence of any document, except in the cases hereinafore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

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## CHAPTER XI.

### OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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## SCHEDULE

## ENACTMENTS REPEALED.

[See Section 2.]

Number and year.	TITLES.	Extent of repeal.
Stat. 26 Geo. III, Cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies ; for repealing so much of an Act, made in the twenty-fourth year of the reign of His present Majesty (intituled ' An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies,') as requires the servants of the East India Company to deliver inventories of their estates and effects ; for rendering the laws more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of Justice in the East Indies.
Stat. 14 and 15 Vic., Cap. 99.	To amend the Law of Evidence ...	Section eleven and so much of section nineteen as relates to British India.
Act XV of 1852 ...	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX of 1853 ...	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II. of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861 ...	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty-seven.
Act I of 1868 ...	The General Clauses Act, 1868 ...	Sections seven and eight.

## ACT NO. III OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 22nd March 1872.)*

An Act to provide a form of Marriage in certain cases.

Preamble- WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jainia religion, and to legalize certain marriages the validity of which is doubtful; it is hereby enacted as follows:—

Local extent.

1. This Act extends to the whole of British India.\*

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jainia religion, upon the following conditions:—

Conditions upon which marriages under Act may be celebrated.

(1)—Neither party must, at the time of the marriage, have a husband or wife living:

(2)—The man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3)—Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4)—The parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-

mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III of 1872,' and is hereinafter referred to as 'the Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

Appointment of Marriage Registrars.  
One of the parties to intended marriage to give notice to Registrar.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar, before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices and keep them within the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspection the same.

Notice to be filed and copy entered in the Marriage Notice Book.

6. Fourteen days after notice of an intended marriage has been given under section four, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Objection to marriage.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in the clause (1), (2), (3), or (4) of section two.

The nature of the objection made shall be recorded in writing by the Registrar, in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Procedure on receipt of objection.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two.

Objector may file suit.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3), or (4) of section two, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section seven is filed, may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I, [ A, ] take thee, [ B, ] to be my lawful wife (or husband).

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III of 1872,' in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.



**Fees.**

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he thinks fit, demand payment of any such fee before solemnization of the marriage or performance of any other duties in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section four hundred and ninety-four or section four hundred and ninety-five of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

16. Every person married under this Act who, during the life-time of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two of this Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section two of this Act shall apply to them.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereinafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. *Repealed by Act XII of 1876.*

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

## FIRST SCHEDULE.

*(See Section 4).*

## NOTICE OF MARRIAGE.

To  
1872 for the

a Registrar of Marriages under Act III of  
District.

I hereby give you notice that marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.
A B.	Unmarried. Widower.	Landowner.	Of full age.	.....	23 days.
C D.	Spinster.	.....	Minor.	.....	.....

Witness my hand, this

day of 187

*(Signed)* A B.

## SECOND SCHEDULE.

*(See section 10.)*

*Declaration to be made by the Bridegroom.*

I, A B, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion :
3. I have completed my age of eighteen years :

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisoes of clause (4) of section two of Act III of 1872, render a marriage between us illegal :

[*And when the Bridegroom has not completed his age of twenty-one years :*

5. The consent of my father [*or guardian, as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked : }

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [*the bridegroom.*]

*Declaration to be made by the Bride :—*

I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Pàrsī, Buddhist, Sikh or Jaina religion :

3. I have completed my age of fourteen years :

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisoes of clause (4) of section two of Act III of 1872, render a marriage between us illegal.

[*And when the bride has not completed her age of twenty-one years, unless she is a widow :*

5. The consent of *M N*, my father [*or guardian as the case may be*], has been given to a marriage between myself and *A B*, and has not been revoked : }

6. I am aware that, if any statement in this declaration is false, and if any in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D* :

*G H,*  
*I J,* } [*three witnesses*].  
*K L,*

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :*

Signed in my presence and with my consent by the above-named *A B* and *C D* ;

*M N*, the father [*or guardian*] of the above-named *A B* or (*C D*, as the case may be)].

(Countersigned) *E F*.

Registrar of Marriages under Act III of 1872 for the District of  
Dated the            day of            18   .

THIRD SCHEDULE.

(See section 13).

*Registrar's Certificate*

I, *E F*, certify that, on the                      of                      18                      appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed)      *E F*,

*Registrar of Marriages under Act III of 1872 for the District of*

(Signed) *A B*.

*G H,* } *C D.*  
*I J,* } [three witnesses.]  
*K L,* }

Dated the      day of                      18      .

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FOURTH SCHEDULE.—*Repealed by Act XII of 1876.*

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# THE INDIAN CONTRACT ACT, 1872.

## CONTENTS.

Preamble.

### PRELIMINARY.

#### SECTIONS.

1. Short title.  
Extent.  
Commencement.  
Enactments repealed.
  2. Interpretation-clause.
- 

### CHAPTER I.

#### OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. Communication, acceptance and revocation of proposals.
  4. Communication when complete.
  5. Revocation of proposals and acceptances.
  6. Revocation how made.
  7. Acceptance must be absolute.
  8. Acceptance by performing conditions, or receiving consideration.
  9. Promises, express and implied.
- 

### CHAPTER II.

#### OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
13. 'Consent' defined.
14. 'Free consent' defined.
15. 'Coercion' defined.
16. 'Undue influence' defined.
17. 'Fraud' defined.
18. 'Misrepresentation' defined.
19. Voidability of agreements without free consent.

## SECTIONS.

20. Agreement void where both parties are under mistake as to matter of fact.
21. Effect of mistakes as to law.
22. Contract not voidable merely because of mistake of one party as to matter of fact.
23. What considerations and objects are lawful, and what not.

## VOID AGREEMENTS.

24. Agreements void, if considerations and objects unlawful in part.
25. Agreement without consideration, void, unless—  
it is in writing and registered,  
or is a promise to compensate for something done,  
or is a promise to pay a debt barred by limitation law.
26. Agreement in restraint of marriage, void.
27. Agreement in restraint of trade, void.  
Saving of agreement not to carry on business of which good-will is sold;  
of agreement between partners prior to dissolution;  
or during continuance of partnership.
28. Agreements in restraint of legal proceedings, void.  
Saving of contract to refer to arbitration dispute that may arise.  
Suits barred by such contracts.  
Saving of contract to refer questions that have already arisen.
29. Agreements void for uncertainty.
30. Agreements by way of wager, void.  
Exception in favour of certain prizes for horse-racing.  
Section 294A of the Indian Penal Code not affected.

## CHAPTER III.

## OF CONTINGENT CONTRACTS.

31. 'Contingent contract' defined.
32. Enforcement of contracts contingent on an event happening.
33. Enforcement of contracts contingent on an event not happening.
34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.
35. When contracts become void, which are contingent on happening of specified event within fixed time.  
When contracts may be enforced, which are contingent on specified event not happening within fixed time.
36. Agreements contingent on impossible events, void.

## CHAPTER IV.

## OF THE PERFORMANCE OF CONTRACTS.

## CONTRACTS WHICH MUST BE PERFORMED.

## SECTIONS.

37. Obligation of parties to contracts.
38. Effect of refusal to accept offer of performance.
39. Effect of refusal of party to perform promise wholly.

## BY WHOM CONTRACTS MUST BE PERFORMED.

40. Person by whom promise is to be performed.
41. Effect of accepting performance from third person.
42. Devolution of joint liabilities.
43. Any one of joint promisors may be compelled to perform.  
Each promisor may compel contribution.  
Sharing of loss by default in contribution.
44. Effect of release of one joint contractor.
45. Devolution of joint rights.

## TIME AND PLACE FOR PERFORMANCE.

46. Time for performance of promise, where no time is specified and no application to be made.
47. Time and place for performance of promise, where time is specified and no application to be made.
48. Application for performance to be at proper time and place.
49. Place for performance of promise, where no application to be made and no place fixed.
50. Performance in manner or at time prescribed or sanctioned by promisee.

## PERFORMANCE OF RECIPROCAL PROMISES.

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.
52. Order of performance of reciprocal promises.
53. Liability of party preventing event on which contract is to take effect.
54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.
55. Effect of failure to perform at fixed time, in contract in which time is essential.

Effect of such failure when time is not essential.

Effect of acceptance of performance at time other than that agreed upon.

56. Agreement to do impossible act, void.

Contract to do impossible act, or one which afterwards becomes impossible or illegal, when void.

Compensation for loss on non-performance of act known to be impossible or unlawful.



## SECTIONS.

57. Where there are promises to do things legal, and also other things illegal, the former are a contract, the latter a void agreement.
58. In alternative promise, one branch being illegal, legal branch alone enforceable.

## APPROPRIATION OF PAYMENTS.

59. Application of payment where debt to be discharged is indicated.
60. Application of payment where debt to be discharged is not indicated.
61. Application of payment where neither party makes appropriation.

## CONTRACTS WHICH NEED NOT BE PERFORMED.

62. Contracts changed, rescinded or altered need not be performed.
  63. Promisee may dispense with or remit performance of promise.
  64. Consequences of rescission of voidable contract.
  65. Obligation of person who has received advantage under void agreement, or contract that becomes void.
  66. Mode of communicating or revoking rescission of voidable contract.
  67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.
- 

## CHAPTER V.

## OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. Claim for necessities supplied to person incapable of contracting, or on his account.
  69. Reimbursement of person paying money due by another, in payment of which he is interested.
  70. Obligation of person enjoying benefit of non-gratuitous act.
  71. Responsibility of finder of goods.
  72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.
- 

## CHAPTER VI.

## OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. Compensation for loss of damage caused by breach of contract.  
Compensation for failure to discharge obligation resembling those created by contract.
74. Title to compensation for breach of contract in which a sum is named as payable in case of breach.
75. Party rightfully rescinding contract, entitled to compensation.

## CHAPTER VII.

## SALE OF GOODS.

## WHEN PROPERTY IN GOODS SOLD PASSES.

## SECTIONS.

76. 'Goods' defined.
77. 'Sale' defined.
78. Sale how effected.
79. Transfer to ownership of thing sold, which has yet to be ascertained, made or finished.
80. Completion of sale of goods which the seller is to put into state in which buyer is to take them.
81. Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.
82. Completion of sale, when goods are unascertained at date of contract.
83. Ascertainment of goods by subsequent appropriation.
84. Ascertainment of goods by seller's selection.
85. Transfer of ownership of moveable property, when sold together with immoveable.
86. Buyer to bear loss after goods have become his property.
87. Transfer of ownership of goods agreed to be sold while non-existent.
88. Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.
89. Determination of price not fixed by contract.

## DELIVERY.

90. Delivery how made.
91. Effect of delivery to wharfinger or carrier.
92. Effect of part-delivery.
93. Seller not bound to deliver until buyer applies for delivery.
94. Place of delivery.

## SELLER'S LIEN.

95. Seller's lien.
96. Lien where payment to be made at a future day, but no time fixed for delivery.  
'Insolvency' defined.
97. Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.
98. Seller's lien against subsequent buyer.

## STOPPAGE IN TRANSIT.

99. Power of seller to stop in transit.
100. When goods are to be deemed in transit.
101. Continuance of right of stoppage.
102. Cessation of right on assignment, by buyer, of document showing title.

## SECTIONS.

- 103. How seller may stop where instrument of title assigned to secure specific advance.
- 104. Stoppage how effected.
- 105. Notice of seller's claim.
- 106. Right of seller on stoppage.

## RESALE.

- 107. Resale on buyer's failure to perform.

## TITLE.

- 108. Title conveyed by seller of goods to buyer.

## WARRANTY.

- 109. Seller's responsibility for badness of title.
- 110. Establishment of implied warranty of goodness or quality.
- 111. Warranty of soundness implied on sale of provisions.
- 112. Warranty of bulk implied on sale of goods by sample.
- 113. Warranty implied where goods are sold as being of a certain denomination.
- 114. Warranty where goods ordered for a specified purpose.
- 115. Warranty on sale of article of wellknown ascertained kind.
- 116. Seller when not responsible for latent defects.
- 117. Buyer's right on breach of warranty.
- 118. Right of buyer on breach of warranty in respect of goods not ascertained.

## MISCELLANEOUS.

- 119. When buyer may refuse to accept, if goods not ordered are sent with goods ordered.
- 120. Effect of wrongful refusal to accept.
- 121. Right of seller as to rescission, on failure of buyer to pay price at time fixed.
- 122. Sale and transfer of lots sold by auction.
- 123. Effect of use, by seller, of pretended biddings to raise price.

---

CHAPTER VIII.

## OF INDEMNITY AND GUARANTEE.

- 124. 'Contract of indemnity' defined.
- 125. Rights and liabilities of indemnity-holder, when sued.
- 126. 'Contract of guarantee' 'surety', 'principal debtor', and 'creditor'.
- 127. Consideration for guarantee.
- 128. Surety's liability.
- 129. 'Continuing guarantee.'
- 130. Revocation of continuing guarantee.

## SECTIONS.

131. Revocation of continuing guarantee by surety's death.
132. Liability of two persons, primarily liable, not affected by private arrangement between them as to suretyship.
133. Discharge of surety by variance in terms of contract.
134. Discharge of surety by release or discharge of principal debtor.
135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.
136. Surety not discharged when agreement made with third person to give time to principal debtor.
137. Creditor's forbearance to sue does not discharge surety.
138. Release of one co-surety does not discharge others.
139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
140. Rights of surety on payment or performance.
141. Surety's right to benefit of creditor's securities.
142. Guarantee obtained by misrepresentation, invalid.
143. Guarantee obtained by concealment, invalid.
144. Guarantee on agreement that creditor shall not act on it until co-surety joins.
145. Implied promise to indemnify surety.
146. Co-sureties liable to contribute equally.
147. Liability of co-sureties bound in different sums.

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CHAPTER IX.

## OF BAILMENT.

148. 'Bailment,' 'bailor,' and 'bailee,' defined.
149. Delivery to bailee how made.
150. Bailor's duty to disclose faults in goods bailed.
151. Care to be taken by bailee.
152. Bailee when not liable for loss, &c., of thing bailed.
153. Termination of bailment by bailee's act inconsistent with condition.
154. Liability of bailee making unauthorized use of goods bailed.
155. Effect of mixture, with bailor's consent, of his goods with goods of bailee.
156. Effect of mixture, without bailor's consent, when the goods can be separated.
157. Effect of mixture, without bailor's consent, when the goods cannot be separated.
158. Re-payment, by bailor, of necessary expenses.
159. Restoration of goods bailed gratuitously.

**SECTIONS.**

- 160. Return of goods bailed, on expiration of time or accomplishment of purpose.
- 161. Bailee's responsibility when goods are not duly delivered or tendered.
- 162. Termination of gratuitous bailment by death.
- 163. Bailor entitled to increase or profit from goods bailed.
- 164. Bailor's responsibility to bailee.
- 165. Bailment by several joint owners.
- 166. Bailee not responsible on re-delivery to bailor without title.
- 167. Right of third person claiming goods bailed.
- 168. Right of finder of goods.  
May sue for specific reward offered.
- 169. When finder of thing commonly on sale may sell it.
- 170. Bailee's particular lien.
- 171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

**BAILMENTS OF PLEDGES.**

- 172. 'Pledge,' 'pawnor,' and 'pawnee' defined.
  - 173. Pawnee's right of retainer.
  - 174. Pawnee not to retain for debt or promise other than that for which goods pledged.  
Presumption in case of subsequent advances.
  - 175. Pawnee's right as to extraordinary expenses incurred.
  - 176. Pawnee's right where pawnor makes default.
  - 177. Defaulting pawnor's right to redeem.
  - 178. Pledge by possessor of goods, or of documentary title to goods.
  - 179. Pledge where pledgor has only a limited interest.
- SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS.**
- 180. Suit by bailor or bailee against wrong-doer.
  - 181. Apportionment of relief or compensation obtained by such suits.

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**CHAPTER X.****AGENCY.****APPOINTMENT AND AUTHORITY OF AGENTS.**

- 182. 'Agent' and 'principal' defined.
- 183. Who may employ agent.
- 184. Who may be an agent.
- 185. Consideration not necessary.
- 186. Agent's authority may be expressed or implied.
- 187. Definitions of express and implied authority.
- 188. Extent of agent's authority.
- 189. Agent's authority in an emergency.

**SUB-AGENTS.****SECTIONS.**

- 190. When agent cannot delegate.
- 191. 'Sub-agent' defined.
- 192. Representation of principal by sub-agent properly appointed.  
Agent's responsibility for sub-agent.  
Sub-agent's responsibility.
- 193. Agent's responsibility for sub-agent appointed without authority.
- 194. Relation between principal and person duly appointed by agent to act in business of agency.
- 195. Agent's duty in naming such person.

**RATIFICATION.**

- 196. Right of person as to acts done for him without his authority.  
Effect of ratification.
- 197. Ratification may be expressed or implied.
- 198. Knowledge requisite to valid ratification.
- 199. Effect of ratifying unauthorized act forming part of a transaction.
- 200. Ratification of unauthorized act cannot injure third person.

**REVOCATION OF AUTHORITY.**

- 201. Termination of agency.
- 202. Termination of agency, where agent has an interest in subject-matter.
- 203. When principal may revoke agent's authority.
- 204. Revocation where authority has been partly exercised.
- 205. Compensation for revocation by principal, or renunciation by agent.
- 206. Notice of revocation of renunciation.
- 207. Revocation and renunciation may be expressed or implied.
- 208. When termination of agent's authority takes effect as to agent, and as to third persons.
- 209. Agent's duty on termination of agency by principal's death or insanity.
- 210. Termination of sub-agent's authority.

**AGENT'S DUTY TO PRINCIPAL.**

- 211. Agent's duty in conducting principal's business.
- 212. Skill and diligence required from agent.
- 213. Agent's accounts.
- 214. Agent's duty to communicate with principal.
- 215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.
- 216. Principal's right to benefit gained by agent dealing on his own account in business of agency.
- 217. Agent's right of retainer out of sums received on principal's account.

## SECTIONS.

- 218. Agent's duty to pay sums received for principal.
- 219. When agent's remuneration becomes due.
- 220. Agent not entitled to remuneration for business misconducted.
- 221. Agent's lien on principal's goods and papers.

## PRINCIPAL'S DUTY TO AGENT.

- 222. Agent to be indemnified against consequences of lawful acts.
- 223. Agent to be indemnified against consequences of acts done in good faith.
- 224. Non-liability of employer of agent to do a criminal act.
- 225. Compensation to agent for injury caused by principal's neglect.

## EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

- 226. Enforcement and consequence of agent's contracts.
- 227. Principal how far bound, when agent exceeds authority.
- 228. Principal not bound when excess of agent's authority is not separable.
- 229. Consequences of notice given to agent.
- 230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.  
Presumption of contract to contrary.
- 231. Rights of parties to a contract made by agent not disclosed.
- 232. Performance of contract with agent supposed to be principal.
- 233. Right of person dealing with agent personally liable
- 234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
- 235. Liability of pretended agent.
- 236. Person falsely contracting as agent, not entitled to performance.
- 237. Liability of principal inducing belief that agent's unauthorized acts were authorized.
- 238. Effect, on agreement, of misrepresentation or fraud by agent.

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CHAPTER XI.

## OF PARTNERSHIP.

- 239. 'Partnership' defined.  
'Firm' defined.
- 240. Lender not a partner by advancing money for share of profits.
- 241. Property left in business by retiring partner, or deceased partner's representative.
- 242. Servant or agent remunerated by share of profits, not a partner.
- 243. Widow or child of deceased partner receiving annuity out of profits, not a partner.

## SECTIONS.

- 244. Person receiving a portion of profits for sale of good-will; not a partner.
- 245. Responsibility of person leading another to believe him a partner.
- 246. Liability of person permitting himself to be represented as a partner.
- 247. Minor partner not personally liable, but his share is.
- 248. Liability of minor partner on attaining majority.
- 249. Partner's liability for debts of partnership.
- 250. Partner's liability to third person for neglect or fraud of co-partner.
- 251. Partner's power to bind co-partners.
- 252. Annulment of contract defining partners' right and obligations.
- 253. Rules determining partners' mutual relations, where no contract to the contrary.
- 254. When Court may dissolve partnership.
- 255. Dissolution of partnership by prohibition of business.
- 256. Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.
- 257. General duties of partners.
- 258. Account, to firm, of benefit derived from transaction affecting partnership.
- 259. Obligations, to firm, of partner carrying on competing business.
- 260. Revocation of continuing guarantee by change in firm.
- 261. Non-liability of deceased partner's estate for subsequent obligations.
- 262. Payment of partnership-debts, and of separate debts.
- 263. Continuance of partner's rights and obligations after dissolution.
- 264. Notice of dissolution.
- 265. Right of partners to apply for winding-up by Court after termination of partnership.
- 266. Limited liability partnerships, incorporated partnerships, and joint stock companies.

SCHEDULE—Enactments repealed.

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# ACT NO, IX OF 1872.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 25th April, 1872.)*

## The Indian Contract Act, 1872.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts ; It is hereby enacted as follows :—

### PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent.

Commencement.

It extends to the whole of British India ; and it shall come into force on the first day of September 1872.

Enactments repealed.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof ; but nothing herein contained shall affect the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation-clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

(a.)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

"Proposal."

(b.)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise :

"Promise."

"Promisor" and "promisee."

(c.)—The person making proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee' :

(d.)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :

"Consideration."

"Agreement."

(e.)—Every promise and every set of promises, forming the consideration for each other, is an agreement :

- "Reciprocal promises." (f.)—Promises which form the consideration or part of the consideration for each other, are called reciprocal promises :
- "Void agreement." (g.)—An agreement not enforceable by law is said to be void :
- "Contract." (h.)—An agreement enforceable by law is a contract :
- (i.)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :
- "Voidable contract."
- "Void contract." (j.)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

## CHAPTER I.

### OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,  
 as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the proposer ;  
 as against the acceptor, when it comes to the knowledge of the proposer.  
 The communication of a revocation is complete,  
 as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;  
 as against the person to whom it is made, when it comes to his knowledge.

#### *Illustrations.*

(a.) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b.) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,

as against A when the letter is posted ;

as against B, when the letter is received by A.

(c.) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

*Illustration.*

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made. 6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified :

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance

Acceptance by performing conditions, or receiving consideration.

of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. In so far as the proposal or acceptance of any promise is made in Promises, express and implied. words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

## CHAPTER II.

### OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

#### *Illustrations.*

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests cannot contract whilst such delirium or drunkenness lasts.

“Consent” defined.”

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

“Free consent” defined.

14. Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section fifteen, or
- (2) undue influence, as defined in section sixteen, or
- (3) fraud, as defined in section seventeen, or
- (4) misrepresentation, as defined in section eighteen, or
- (5) mistake, subject to the provisions of sections twenty, twenty-one, and twenty-two.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

*Explanation.*—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

#### *Illustration.*

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined.

16. "Undue influence" is said to be employed in the following cases:—

(1).—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained:

(2).—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

"Fraud" defined.

(1).—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2).—The active concealment of a fact by one having knowledge or belief of the fact;

(3).—A promise made without any intention of performing it;

(4).—Any other act fitted to deceive;

(5).—Any such act or omission as the law specially declares to be fraudulent.

*Explanation.*—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

#### *Illustrations.*

(a.) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b.) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A—"If you do not deny it, I shall assume that the horse is sound;" A says nothing. Here, A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

*Exception.*—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

*Explanation.*—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

*Illustrations.*

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

*Explanation.*—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

*Illustrations.*

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

*Illustrations.*

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation : the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France : the contract is voidable.

Contract not voidable merely because of mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law ; or

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another ; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

*Illustrations.*

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration of A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.



(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j.) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

#### VOID AGREEMENTS.

Agreements void, if considerations and objects unlawful in part.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

#### *Illustration.*

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration, void, unless—

25. \*An agreement made without consideration is void, unless

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless it is in writing and registered,

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless or is a promise to compensate for something done.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. or is a promise to pay a debt barred by limitation law.

In any of these cases, such an agreement is a contract.

*Explanation 1.*—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

\* Not affected by the Limitation Act, See Section 2, Act XV of 1877.

*Illustrations.*

(a.) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b.) A for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c.) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage, void. 26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

*Exception 1.*—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

*Exception 2.*—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

*Exception 3.*—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

*Exception 1.*—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

\* \* \* \*

**Exception 2.**—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer questions that have already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty. 29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

*Illustrations.*

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c.) A who is a dealer in cocoanut-oil only, agrees to sell to B 'one hundred tons of oil.' The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d.) A agrees to sell to B 'all the grain in my granary at Ramnagar.' There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f.) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Exception in favour of certain prizes for horse-racing. Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

## CHAPTER III.

### OF CONTINGENT CONTRACTS.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract does or does not happen.

*Illustration.*

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

**32. Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.**

Enforcement of contracts contingent on an event not happening.

If the event becomes impossible, such contracts become void.

*Illustrations.*

(a.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b.) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

**33. Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.**

Enforcement of contracts contingent on an event not happening.

*Illustration.*

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

**34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.**

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

*Illustration.*

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

When contracts become void, which are contingent on happening of specified event within fixed time.

**35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.**

When contracts may be enforced, which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

*Illustrations.*

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

*Illustrations.*

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

## CHAPTER IV.

### OF THE PERFORMANCE OF CONTRACTS.

#### CONTRACTS WHICH MUST BE PERFORMED.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

*Illustrations.*

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

(1). It must be unconditional :

(2). It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do :

(3). If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

*Illustration.*

A contracts to deliver to B at his warehouse, on the first March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the

appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

**39.** When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

*Illustrations.*

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

**BY WHOM CONTRACTS MUST BE PERFORMED.**

**40.** If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

*Illustrations.*

(a.) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b.) A promises to paint a picture for B. A must perform this promise personally.

**41.** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

**42.** When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

**43.** When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

**Explanation.**—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

*Illustrations.*

(a.) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

*Illustration.*

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

**TIME AND PLACE FOR PERFORMANCE.**

Time for performance of promise, where no time is specified and no application to be made.

reasonable time.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

**Explanation.**—The question 'what is a reasonable time' is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise, where time is specified and no application to be made.

*Illustration.*

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

## 48. When a promise is to be performed on a certain day, and the

Application for performance to be at proper time and place.

and within the usual hours of business.

promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place

*Explanation.*—The question 'what is a proper time and place' is, in each particular case, a question of fact.

## 49. When a promise is to be performed without application by the

Place for performance of promise, where no application to be made and no place fixed.

place.

promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such

*Illustration.*

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

*Illustrations.*

(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100, by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

## PERFORMANCE OF RECIPROCAL PROMISES.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

*Illustrations.*

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on dayment.



(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be performed

Order of performance of is expressly fixed by the contract, they shall be per-reciprocal promises. formed in that order; and where the order is not

expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

*Illustrations.*

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to

●Liability of party pre- the contract prevents the other from performing his venting event on which promise, the contract becomes voidable at the op- contract is to take effect. tion of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

*Illustration.*

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such that one of

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises. them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

*Illustrations.*

(a.) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act, void.

56. An agreement to do an act impossible in itself is void.

Contract to do impossible act, or one which afterwards becomes impossible or illegal, when void.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

#### *Illustrations.*

(a.) A agrees with B to discover treasure by magic. The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Where there are promises to do things legal, and also other things illegal, the former are a contract, the latter a void agreement.

57. Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

*Illustration.*

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

In alternative promise, one branch being illegal, legal branch alone enforceable.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

*Illustration.*

A and B agree that A shall pay 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

### APPROPRIATION OF PAYMENTS.

59. Where a debtor, owing several distinct debts to one person,

Application of payment where debt to be discharged is indicated.

makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

*Illustrations.*

(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other

Application of payment where debt to be discharged is not indicated.

circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or not barred by the law in force for the time being as to the limitation of suits.

61. Where neither party makes any appropriation, the payment shall

Application of payment where neither party makes appropriation.

be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

### CONTRACTS WHICH NEED NOT BE PERFORMED.

Contracts charged, rescinded or altered need not be performed.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

*Illustrations.*

(a.) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000. This is a new contract and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Promisee may dispense with or remit performance of promise.

*Illustrations.*

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Obligation of person who has received advantage under void agreement, or contract that becomes void.

*Illustrations.*

(a.) A pays 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre or two nights in every week during the next two months, and B engages to pay her a

hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a contract for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or

Mode of communicating  
or revoking rescission of  
voidable contract.

revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

*Illustration.*

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

## CHAPTER V.

### OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting, or on his account.

*Illustrations.*

(a.) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested.

69. A person who is interested in the payment of money which another is bound by law to pay; and who therefore pays it, is entitled to be reimbursed by the other.

*Illustration*

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of gratuitous act.

*Illustrations.*

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or any thing delivered, by mistake or under coercion, must repay or return it.

*Illustrations.*

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

## CHAPTER VI.

### OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage, sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Compensation for failure to discharge obligation resembling those created by contract.

*Explanation.*—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

*Illustrations.*

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e.) A the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h.) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i.) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j.) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B in consequence, rescinds the contract. C must pay to A

20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m.) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o.) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B, afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p.) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q.) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.



74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

**Exception.**—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

**Explanation**—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

*Illustrations.*

(a.) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

Party rightfully rescinding contract, entitled to compensation.

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

*Illustration.*

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

## CHAPTER VII.

### SALE OF GOODS.

#### WHEN PROPERTY IN GOODS SOLD PASSES.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.

77. 'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

78. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

*Illustrations.*

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished, the ownership of the thing is not transferred to the buyer until it is ascertained, made or finished.

*Illustration.*

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods which the seller is to put into state in which buyer is to take them.

thing has been done.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such

*Illustration.*

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

*Illustrations.*

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's ground to B's place, of deposit. Here, nothing more remains to be done by the seller; the sale is completed and the ownership of the heap of clay is transferred at once.

Completion of sale, when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

*Illustration.*

A agrees to sell to B, 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party, for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Ascertainment of goods by subsequent appropriation.

*Illustration.*

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so, the goods are ascertained.

Ascertainment of goods by seller's selection.

*Illustration.*

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

*Illustration.*

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

**86.** When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

*Illustrations.*

(a.) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

**87.** When there is a contract for the sale of goods not yet in existence,

Transfer of ownership of goods agreed to be sold while non-existent.

the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

*Illustrations.*

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

**88.** A contract for the sale of goods to be delivered at a future day

Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.

is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

*Illustration.*

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

**89.** Where the price of goods sold is not fixed by the contract of sale,

Determination of price not fixed by contract.

the buyer is bound to pay the seller such a price as the Court considers reasonable.

*Illustration.*

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

**DELIVERY.**

**90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.**  
*Delivery how made.*

*Illustrations.*

(a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b.) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

**91. A delivery to a wharfinger or carrier of the goods sold, has the effect of delivery to same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.**  
*Effect of delivery to wharfinger or carrier.*

*Illustration.*

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

**92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.**  
*Effect of part-delivery.*

*Illustrations.*

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of fire-wood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are

Place of delivery.

at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

#### SELLER'S LIEN.

95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid.

Seller's lien.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Lien where payment to be made at a future day, but no time fixed for delivery.

*Explanation.*—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

'Insolvency' defined.

#### *Illustration.*

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

#### *Illustration.*

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

#### STOPPAGE IN TRANSIT.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the

When goods are to be deemed in transit.

course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

*Illustrations.*

(a.) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling

Continuance of right of stoppage.

the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

102. The right of stoppage ceases if the buyer, having obtained a bill

Cessation of right on assignment, by buyer, of document showing title.

of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

*Illustrations.*

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. B being still unpaid, B becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods

How seller may stop where instrument of title assigned to secure specific advance.

is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advanced sum, stop the goods in transit.

*Illustrations.*

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

*Illustration.*

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

**RESALE.**

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such resale.

**TITLE.**

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

**EXCEPTION 1.**—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.



**EXCEPTION 2.**—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

**EXCEPTION 3.**—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

#### *Illustrations.*

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

#### WARRANTY.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

**Seller's responsibility for badness of title.**  
**Establishment of implied warranty of goodness of quality.**

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

**Warranty of soundness implied on sale of provisions.**

111. On the sale of provisions, there is an implied warranty that they are sound.

**Warranty of bulk implied on sale of goods by sample.**

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

113. Where goods are sold as being of a certain denomination, there

Warranty implied where goods are sold as being of a certain denomination. is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

*Explanation.*—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

*Illustrations.*

(a.) A, at Calcutta, sells to B twelve bags of “waste silk,” then on its way from Murshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of “waste silk.”

(b.) A buys, by sample and after having inspected the bulk, 100 bales of “Fair Bengal” cotton. The cotton proves not to be such as is known in the market as “Fair Bengal”: there is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for

Warranty where goods ordered for a specified purpose. which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

*Illustration.*

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of article of well-known ascertained kind. 115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

*Illustration.*

B writes to A, the owner of a patent invention for cleaning cotton—“Send me your patent cotton-cleaning machine to clean the cotton at my factory.” A sends the machine according to order. There is an implied warranty by A that it is the article known as A’s patent cotton-clearing machine, but none that it is fit for the particular purpose of cleaning the cotton at B’s factory.

116. In the absence of fraud and of any express warranty of quality,

Seller when not responsible for latent defects. the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

*Illustrations.*

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered

Buyer’s right on breach of warranty. and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

*Illustration.*

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were

Right of buyer on breach of warranty in respect of goods not ascertained.

not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

#### *Illustrations.*

(a.) A agrees to sell and, without application on B's part, deliver to B 200 bales, of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of a twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

#### MISCELLANEOUS.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

#### *Illustration.*

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

122. Where goods are sold by auction, there is a distinct and separate sale and transfer of lots sold by auction. sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Effect of use, by seller,  
of pretended biddings to  
raise price.

**123.** If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

## CHAPTER VIII.

### OF INDEMNITY AND GUARANTEE.

**124.** A contract by which one party promises, to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.'

#### *Illustration.*

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Right and liabilities of  
indemnity-holder, when  
sued.

**125.** The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

**126.** A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor,' and the person to whom the guarantee is given is called the 'creditor.' A guarantee may be either oral or written.

**127.** Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

#### *Illustrations.*

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Surety's liability.

*Illustration.*

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions, is called a 'continuing guarantee.'

'Continuing guarantee.

*Illustrations.*

(a.) A, in consideration that B will employ C in collecting the rents of B's zemindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards, B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

*Illustrations.*

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. A discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation, C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Where two

Liability of two persons, primarily liable, not affected by private arrangement between them as to suretyship.

persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

*Illustration.*

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

**133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.**

Discharge of surety by variance in terms of contract.

*Illustrations.*

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

**134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.**

Discharge of surety by release or discharge of principal debtor.

*Illustrations.*

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

**135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.**

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

Surety not discharged when agreement made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

*Illustration.*

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

*Illustration.*

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Release of one co-surety does not discharge others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

*Illustrations.*

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this payment.

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Surety's right to benefit of creditor's securities.

*Illustrations.*

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c.) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

*Illustrations.*

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

*Illustrations.*

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.



(c.) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

**146.** Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under tribute equally. the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

*Illustrations.*

(a.) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(b.) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound of different sums.

**147.** Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

*Illustrations.*

(a.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

## CHAPTER IX.

### OF BAILMENT.

**148.** A 'bailment' is the delivery of goods by one person to another 'Bailment,' 'bailor,' and for some purpose, upon a contract that they shall, 'bailee' defined. when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

*Explanation.*—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

*Illustrations.*

(a.) A lends a horse which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

*Illustration.*

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

*Illustrations.*

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

**156.** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively ; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

*Effect of mixture, without bailor's consent, when the goods can be separated.*

*Illustration.*

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark : A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

**157.** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

*Effect of mixture, without bailor's consent, when the goods cannot be separated.*

*Illustration.*

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

**158.** Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

**159.** The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

**160.** It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

*Return of goods bailed, on expiration of time or accomplishment of purpose.*

**161.** If, by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

*Bailee's responsibility when goods are not duly delivered or tendered.*

*Termination of gratuitous bailment by death.*

**162.** A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

**163.** In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

*Bailor entitled to increase or profit from goods bailed.*

*Illustration.*

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailor's responsibility to bailee.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailment by several joint owners.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Bailee not responsible on re-delivery to bailor without title.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods.

May sue for specific reward offered.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

*Illustrations.*

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done, B is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy-broker may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

#### BAILMENTS OF PLEDGES.

172. The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.' The bailor is in this case called the 'pawnor.' The bailee is called the 'pawnee.'

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of any goods, or of any bill of lading, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

179. Where a person pledges goods in which he has only a limited Pledge where pledger has interest, the pledge is valid to the extent of that only a limited interest. interest.

#### SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

181. *Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.*

### CHAPTER X.

#### AGENCY.

##### APPOINTMENT AND AUTHORITY OF AGENTS.

182. An 'agent' is a person employed to do any act for another, or 'Agent and 'principal' to represent another in dealings with third persons. defined. The person for whom such act is done, or who is so represented, is called the 'principal.'

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, Who may employ agent. may employ an agent.

184. As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained. Who may be an agent.

185. No consideration is necessary to create an agency. Consideration not necessary.

186. The authority of an agent may be expressed or implied. Agent's authority may be expressed or implied.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. Definitions of express and implied authority.

#### *Illustration.*

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

**188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.**  
 Extent of agent's authority.

An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

*Illustrations.*

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

**189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.**  
 Agent's authority in an emergency.

*Illustrations.*

(a.) An agent for sale may have goods repaired if it be necessary.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C, at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

**SUB-AGENTS.**

**190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.**  
 When agent cannot delegate.

**191. A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.**  
 'Sub-agent' defined.

**192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.**  
 Representation of principal by sub-agent properly appointed.

**The agent is responsible to the principal for the acts of the sub-agent:**  
 Agent's responsibility for sub-agent.

**The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.**  
 Sub-agent's responsibility.

**193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such persons in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.**  
 Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

#### *Illustrations.*

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

#### *Illustrations.*

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

### RATIFICATION.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

#### *Illustrations.*

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.



**200.** An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorized act cannot injure third person.

*Illustrations.*

(a.) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

**REVOCATION OF AUTHORITY.**

**201.** An agency is terminated by the principal revoking his authority ; or by the agent renouncing the business of the agency ; or by the business of the agency being completed ; or by either the principal or agent dying or becoming of unsound mind ; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

**202.** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency where agent has an interest in subject-matter.

*Illustrations.*

(a.) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

**203.** The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

**204.** The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

*Illustrations.*

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

**205.** Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal, or renunciation by agent.

**206.** Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

Revocation and renunciation may be expressed or implied.

**207.** Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

#### *Illustration.*

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons.

**208.** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

#### *Illustrations.*

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter directs B to sell for him some cotton lying in warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

**209.** When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

**210.** The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

### AGENT'S DUTY TO PRINCIPAL.

**211.** An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

*Illustrations.*

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investments. A must make good to B the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

**212.** An agent is bound to conduct the business of the agency with Skill and diligence required from agent. as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

*Illustrations.*

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e. g.*, by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the under-writers. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

*Agent's accounts.*

**213.** An agent is bound to render proper accounts to his principal on demand.

**214.** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

*Agent's duty to communicate with principal.*

**215.** If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case show, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

*Right of principal when agent deals, on his own account, in business of agency without principal's consent.*

*Illustrations.*

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

**216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.**

Principal's right to benefit gained by agent dealing on his own account in business of agency.

*Illustration.*

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

**217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.**

Agent's right of retainer out of sums received on principal's account.

Agent's duty to pay sums received for principal.

**218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.**

**219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.**

When agent's remuneration becomes due.

Agent not entitled to remuneration for business misconducted.

**220. An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.**

*Illustrations.*

(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

**221.** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for him.

Agent's lien on principal's goods and papers.

#### PRINCIPAL'S DUTY TO AGENT.

Agent to be indemnified against consequences of lawful acts.

**222.** The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

##### *Illustrations.*

(a.) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

**223.** Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

##### *Illustrations.*

(a.) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

**224.** Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.

Non liability of employer of agent to do a criminal act.

##### *Illustrations.*

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

**225.** The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

*Illustration.*

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

**EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.**

**226.** Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts.

*Illustrations.*

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

**227.** When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound when agent exceeds authority.

*Illustration.*

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

**228.** Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separable.

*Illustration.*

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

**229.** Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the businesses transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

*Illustrations.*

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Presumption of contract to contrary.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases :—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :

(2.) Where the agent does not disclose the name of his principal :

(3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

*Illustration.*

A, who owes 500 rupees to B, sells 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

*Illustration.*

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

**236.** A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent, not entitled to performance.

**237.** When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

*Illustrations.*

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

**238.** Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

*Illustrations.*

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b.) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

## CHAPTER XI.

### OF PARTNERSHIP.

**239.** 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

'Partnership' defined.

Persons who have entered into partnership with one another are called collectively a 'firm.'

Firm defined.

*Illustrations.*

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.



**240.** A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

**241.** In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business, is to be considered a loan within the meaning of the last preceding section.

**242.** No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

**243.** No person, being a widow or child of a deceased partner of a trade, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

**244.** No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

**245.** A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm.

**246.** Any one consenting to allow himself to be represented as a partner, is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

**247.** A person who is under the age of majority according to the law to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

**248.** A person who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

**249.** Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become

liable to the creditors of such firm for any thing done before he becomes a partner.

**250.** Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

**251.** Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Partner's power to bind co-partners.

*Exception.*—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

*Illustrations.*

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

**252.** Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Annulment of contract defining partners' rights and obligations.

*Illustration.*

A, B and C, tending to enter into partnership, execute written articles of agreement by which it is stipulated that the nett profits arising from partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partners' mutual relations, where no contract to contrary.

**253.** In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules:—

(1.) All partners are joint owners of all property originally brought into the partnership stock, or brought with money belonging to the partnership, or acquired for purposes of the partnership business. All such

property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss :

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership :

(3.) Each partner has a right to take part in the management of the partnership business :

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :

(5.) When difference arises as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners ; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners :

(6.) No person can introduce a new partner into a firm without the consent of all the partners :

(7.) If, from any cause whatever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :

(9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership. 254. At the suit of a partner the Court may dissolve the partnership in the following cases :—

(1.) When a partner becomes of unsound mind :

(2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

(3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

(4.) When any partner becomes incapable of performing his part of the partnership contract :

(5.) When a partner other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :

(6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership entered into for a fixed term be continued after

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dis-

solvable at the will of any partner.

**257.** Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

General duties of partners.  
Account, to firm, of benefit derived from transaction affecting partnership.

**258.** A partner must account to the firm for any benefit derived from transaction affecting the partnership.

*Illustrations.*

(a.) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

**259.** If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm of all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Obligations, to firm, of partner carrying on competing business.

**260.** A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

Revocation of continuing guarantee by change in firm.  
Non-liability of deceased partner's estate for subsequent obligations.

**261.** The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

**262.** Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Payment of partnership debts, and of separate debts.  
Continuance of partners' rights and obligations after dissolution.

**263.** After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

**264.** Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Notice of dissolution.

265.\* Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated the Court may, in the absence of any contract to the contrary, wind up the business of the partnership provide for the payment of its debts, and distribute the surplus according to the shares of the partners respectively.

*Explanation.*—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

Limited-liability partnerships, incorporated partnerships, and joint-stock companies.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

## SCHEDULE.

### ENACTMENTS REPEALED.

#### *Statutes.*

No. and year of Statute.	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.	An Act for prevention of Frauds and Perjuries.	Sections one, two, three, four and seventeen.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section forty-two.

#### *Acts.*

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII of 1840.	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. iv., chap. 83, as altered and amended by the Statute 6 Geo. iv., chap. 94.	The whole.
Act XIV of 1840.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. iv., chap. 14.	The whole.

\* Act IV of 1886.

No. and year of Act.	TITLE.	Extent of repeal.
Act XX of 1844.	An Act to amending the law relating to Advances <i>bonâ fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statutes 5 and 6 Victoria, c. 29, as altered by this Act.	The whole.
Act XXI of 1848. Act V of 1866.	An Act for avoiding Wagers ... An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	The whole. Sections nine and ten.
Act XV of 1866.	An Act to amend the law of Partnership in India.	The whole.
Act VIII of 1867.	An Act to amend the law relating to Horse-racing in India.	The whole.



## ACT NO. IV OF 1893.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 9th March, 1893.)*

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An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition ; It is hereby enacted as follows :—

1. (1) This Act may be called the Partition Act, 1893.

Title, extent, commencement and saving.

(2) It extends to the whole of British India ; and

(3) It shall come into force at once.

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Power to Court to order sale instead of division in partition suits.



Procedure  
when sharer  
undertakes to  
buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper direction in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such share-holder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition  
suit by trans-  
feree of  
share in  
dwelling-  
house.

4. (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a share-holder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

Represent-  
taion of  
parties under  
disability.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking

or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time. Reserved bidding and bidding by shareholders.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :— Procedure to be followed in case of sales.

(a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon, the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ;

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

XIV of 1882.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to a decree within the meaning of section 2 of the Code of Civil Procedure. Orders for sale to be deemed decrees.

Saving of  
power to  
order partly  
partition and  
partly sale,

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act. XIV of 1882.

Application  
of Act to  
pending  
suits,

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

## ACT NO. IX OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 2nd March 1875).*

An Act to amend the Law respecting the age of majority.

Whereas, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists ; it is hereby enacted as follows :—

1. This Act may be called “ The Indian Majority Act, 1875 :”

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty ;

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Nothing herein contained shall affect—

(a) the capacity of any person to act in the following matters (namely),—  
Marriage, Dower, Divorce, and Adoption ;

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid every minor of whose person or property or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before :

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section three, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section three, at the beginning of the eighteenth anniversary of that day.

*Illustrations.*

(a.) Z is born in British India on the first day of January, 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January, 1871.

(b.) Z is born in British India on the twenty-ninth day of February, 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(c.) Z is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

# ACT NO. VIII OF 1876.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 26th August 1876,  
and of the Governor-General on the 18th September 1876.)

## An Act to make better provision for the Partition of Estates.

Whereas it is expedient to consolidate and amend the law relating to  
Preamble. the partition of estates; It is enacted as follows:—

### PART I.

#### PRELIMINARY.

Short Title. 1. This Act may be called the “Estates Partition  
Act, 1876.”

Local extent. It extends to the territories for the time being  
under the administration of the Lieutenant-Governor  
of Bengal;

Commencement. And it shall come into force from the date on which it may be published  
in the *Calcutta Gazette* with the assent of the  
Governor-General, which date is hereinafter referred  
to as the commencement of this Act.

Laws repealed. 2. On the commencement of this Act, the Regulations and Acts speci-  
fied in the schedule hereto annexed, to the extent  
mentioned in the third column thereof, shall cease  
to have effect in the territories subject to the Lieutenant-Governor of  
Bengal, save so far as they repeal or modify any other Regulations or Acts,  
and save so far as regards the partition of any estate which shall be pending  
at the time of the said commencement.

The partition of any estate which shall be pending at the time of the  
commencement of this Act shall (except as provided in the next succeeding  
section) proceed and be completed in the same manner as if this Act had  
not been passed.

3. The provisions of this Act, so far as they relate to the continuation  
of a partition from the point which it has reached,  
or to the staying of the partition of an estate, or to  
striking a partition case off the file, may be applied,  
at the discretion of the Collector, in all cases of  
partition of estates pending at the time of the  
commencement of this Act; provided that, before applying such provisions  
to the continuation of a partition, the Collector give due notice in each case  
to the parties concerned that such provisions will be applied.

Interpretation clause.

4. In this Act—unless there be something repugnant in the subject or context—

(i). “Amin” means a person who is appointed by the Collector or Deputy Collector to make any measurement, survey, or local inquiry, or to prepare the papers showing the result of any measurement, survey, or local inquiry.

(ii). “Applicant,” means any person who has applied to the Collector under the provisions of this Act for the separation from the parent estate of lands representing his interest in such parent estate, and for the assignment to him of such lands as a separate estate liable for a demand of land revenue distinct from that for which the parent estate is liable.

(iii). “Assets of land” include the rental of land with respect to which the expression is used, and all profits derived by the proprietors out of such land from rights of pasturage, forest-rights, fisheries, and all other legal sources.

(iv). “Assets of an estate” mean the assets of all land included in an estate.

(v). “Board” means the Board of Revenue for the provinces for the time being subject to the Lieutenant-Governor of Bengal.

(vi). “Chapter” means a chapter of this Act.

(vii). “Deputy Collector” includes any Assistant Collector, Deputy Collector, or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition and allotment of assessment under this Act, or to conduct any of the proceedings connected with such partition and allotment.

(viii). “Estate” means all lands which are borne on the revenue roll of a Collector as liable for the payment of one and the same demand of land revenue.

(ix). “Joint undivided estate” means all lands which are borne on the revenue roll of a Collector as liable for the payment of one and the same demand of land revenue, and of which two or more persons are proprietors.

(x). “Land” does not include the houses and buildings standing thereon.

(xi). “Lieutenant-Governor” means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

(xii). “Parent estate” means any estate for the partition of which proceedings may be in progress under this Act, or of which the parties may have been effected under this Act.

(xiii). “Proprietor” includes every person who is in possession of any estate under partition, or of any portion of such estate, or of any interest in such estate, or in any part of such estate, as owner thereof, whether such person be or be not a recorded proprietor of the estate.

“(xiv). Recorded proprietor” means a person whose name is registered on the Collector’s General Register of revenue-paying lands as proprietor of an estate, or of any share or interest therein.

“Section.” (xv). “Sections” means a section of this Act.

(xvi). “Separate estate” means any distinct estate which may be formed by the partition of a parent estate under this Act, or for the formation of which proceedings may be in progress under this Act.

“Separate estate.”

(xvii). “The Collector” means the Collector of the district on the revenue-roll of which the estate under partition, or

“The Collector.”

which it is proposed to bring under partition, is borne, and includes any officer whom the Board may generally vest (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector of the district has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his duties and functions in respect of the portion of any estate; and any officer whom the Board may specially vest (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act.

(xviii) “The Commissioner” means the Commissioner of Revenue to whom the Collector engaged in making the partition is subordinate.

“The Commissioner.”

5. All partitions of estates which shall be ordered to be made after the commencement of this Act, shall be made under the provisions of this Act, and no such partition made otherwise than under this Act shall relieve any lands from liability to Government for the total demand of land revenue assessed upon the estate of which they form a part.

6. The amount of land revenue assessed on each separate estate shall bear the same proportion to the whole amount of land revenue for which the parent estate was liable, as the assets of such separate estate bear to the whole assets of the parent estate.

7. Except as hereinafter otherwise expressly provided, the average of the amount of rent which was payable for any land by the cultivating ryots during the three years immediately preceding the year in which proceedings are taken under this Act for the partition of the estate shall, for the purposes of this Act, be deemed to be the rental of such land;

and if any land is not let, but is held and occupied directly by the proprietors or any of them, the annual rent for which such land might reasonably be expected to let shall be deemed to be the rental of such land.

*Exception 1.*—If the rent payable by the cultivating ryots on account of any land shall have been determined by any Court of competent jurisdiction, or shall have been altered with the consent of the said ryots at any time during the said three years, the amount so determined, or the amount to which the rent may have been so altered, may, if the Collector think proper, be deemed to be the rental of the land.

*Exception 2.*—If any land is held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears



of revenue, the rent payable by the holder of such tenure shall be deemed to be the rental of such land.

*Exception 3.*—If any land is held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure created by all the proprietors of the estate, subject only to the payment of an amount of rent fixed in perpetuity, and of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors, of the said estate, or any person deriving his title from such proprietors, the rent payable by the holder of such tenure (whether he be known as talukdar, patnidar, mukarraridar, or by any other designation) shall be deemed to be the rental of such land.

*Exception 4.*—If any land be unoccupied, such amount as the Collector may determine, with reference to all the circumstances of the case, shall be deemed to be the rental of such land.

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## PART II.

### OF THE RIGHT TO CLAIM PARTITION.

8. Except as hereinafter otherwise provided, every recorded proprietor of a joint undivided estate, who is in actual possession of the interest in respect of which he is so recorded, is entitled to claim a partition of the said estate, and the separation therefrom and assignment to him as a separate estate of lands representing the interest of which he is in such possession; provided that, and as far only as, such partition, separation, and assignment can be made in accordance with the provisions of this Act.

Any two or more such recorded proprietors may claim that lands representing the interests of all such claimants may be formed into one separate estate, to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making such joint claim.

9. (a) If the interest of any recorded proprietor who is entitled to claim partition as aforesaid is an undivided share in an estate held in common tenancy, such person shall be entitled to have assigned to him as his separate estate lands of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(b) If the interest of such recorded proprietor is the proprietary right of certain specific mouzahs or lands forming part of the parent estate, and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said mouzahs or lands.

(c) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in certain specific mouzahs or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate lands situated within such specific mouzahs or tracts, of which the

assets shall bear the same proportion to the assets of such specific mouzahs or tracts as his undivided share in such specific mouzahs or tracts bears to the entire mouzahs or tracts.

Provided that, if the interest of such recorded proprietor consists of such undivided share in more than one mouzah or tract, he shall not be entitled to have lands assigned to him in every such mouzah or tract, but the Collector may assign to him as his separate estate lands situated in any one or more of the said mouzahs or tracts, provided that the assets of such lands are in proportion to the aggregate of the interests which he holds in all such mouzahs or tracts.

(d) If such recorded proprietor holds in the parent estate more than one of the kinds of interest specified in this section, lands shall be assigned to him as far as possible in accordance with the principles above laid down.

10. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be deemed to be a person entitled to claim partition under this Act.

11. No application for the partition of a permanently-settled estate shall be admitted, and if the application shall have been admitted, no partition shall be carried out in accordance with such application, if the separate estate of any of the proprietors would be liable for an annual amount of land revenue not exceeding one rupee, until the proprietor of such separate estate agrees to redeem the amount of revenue for which his estate would be liable, by payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of such estate.

12. Whenever a division of the lands of any estate has been made by private arrangement of the proprietors thereof, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in the estate, no such estate shall be brought under partition, and no partition of such estate shall be made under this Act otherwise than on a joint petition presented under section one hundred and one or section one hundred and five by all the proprietors thereof, unless such partition shall have been ordered to be made by a Civil Court.

13. The Collector may refuse to admit an application for the formation of lands held in severalty into a separate estate, if in consequence of such lands being intermingled with those held by other proprietors the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land revenue, and the Collector may at any time refuse to proceed with a partition which would have such result.

But a partition may be allowed in such a case if the recorded proprietors shall agree to such a distribution of land as shall make the estates formed by the partition reasonably compact.

Nothing in this section shall be understood to prohibit the partition into separate estates of a parent estate which before such partition is not compact and consists only of scattered parcels of land.

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific lands of an estate by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under the provisions of section six ) ;

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate ;

and no such transferee as aforesaid, and no person deriving his title from such transferee, shall be entitled to claim a separation of the interest which has been so acquired ;

Provided that a separation of such interest may be made, if the parties concerned agree to waive the conditions of the contract as regards the proportion of revenue for which the transferer and transferee or their representatives respectively are liable, and to hold the estates which may be allotted to them respectively by the partition, subject to the payment of such amount of land revenue as may be assessed upon them respectively by the revenue authorities under this Act.

15. Notwithstanding that a parent estate may have been declared to be under partition as provided in section thirty-one, any arrears of revenue accruing due on such estate before the date specified in the notice issued under section one hundred and twenty-three may be realized by sale of the parent estate as if such estate had not been declared to be under partition ; and if such sale takes place, the partition proceedings shall cease from the date thereof.

16. Nothing contained in the last preceding section shall be deemed to affect the provisions of sections 10, 11, 12, 13, or 14 of Act XI of 1859 (*an Act to improve the law relating to sales of lands for arrears of revenue*), or any provisions of any similar law for the time being in force in respect to the opening of separate accounts for different shares in an estate, and the protection afforded to such shares thereby :

Provided that, if any share in any estate is sold for its own arrears of revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place ; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

## PART III.

## OF THE APPLICATION FOR THE PARTITION; THE ADMISSION OF AN ESTATE TO PARTITION; AND THE DISCONTINUANCE OF THE PARTITION PROCEEDINGS AFTER SUCH ADMISSION.

17. All applications for partition shall be made to the Collector of the district on the revenue-roll of which the estate is borne, and shall be made in person, or by duly authorized agent, on paper bearing such stamp as may be required by any law for the time being in force.

18. The application shall be signed by the applicant, and shall supply the following information in regard to the parent estate, so far as the particulars are known to the applicant or can be ascertained by him:—

- (a) name of the estate;
- (b) number under which the estate is borne on the revenue-roll and the revenue demand for which it is liable;
- (c) number under which the estate is borne on the Collector's General Register of revenue-paying lands;
- (d) name and address of every proprietor, whether recorded or unrecorded;
- (e) the character and extent of the interest of which each proprietor is in possession;
- (f) a specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands.

19. Subject to the provisions of section sixty-one, every application shall, if possible, be accompanied by a copy of the rent-roll of the estate, by a statement of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding such application, and by copies of any measurement papers of the estate which the applicant may have in his possession.

The said rent-roll, statement, and measurement papers shall be attested by the patwaris of the villages, if any, and every such application, rent-roll, and statement shall be presented, subscribed, and verified as provided in section fifty-two.

If the applicant is unable to produce a rent-roll or statement as above required, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement and the Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

20. If the application does not fulfil the requirements of the three last preceding sections, the Collector may reject such application or may order it to be amended.

21. If in the opinion of the Collector the application fulfils the said requirements, and there appears to be no objection to making the partition, the Collector shall publish a notification of the application, in the manner prescribed in section one hundred and thirty-four, and shall also cause copies

thereof to be posted up at the Court of the Judge of the district, at the court of every Munsif and Subdivisional Officer within whose jurisdiction, and at every Police Station within the jurisdiction of which any lands appertaining to the estate are known to be situated, and shall invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection either in person, or by duly authorized agent, on a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate.

22. Notice of the application shall also be served in the manner prescribed by section one hundred and thirty-five on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application.

23. If any objection be made to the partition by any person claiming a proprietary right as aforesaid on or before the day specified in the notification published under section twenty-one, or at any subsequent time if it shall seem fit to the Collector to admit such objection, and the Collector, on consideration of such objection, shall be of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and in that case shall record the grounds of such rejection.

24. If the objection raises any question of the extent of interest, or of right or title as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it shall appear to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry as he may deem necessary into the objection, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may, instead of rejecting the application as provided in the last preceding section,

(a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or

(b) direct that such proceedings be postponed for four months.

25. At the expiration of the said four months, the Collector shall resume the proceedings, unless the person who has made the objection, or some other person, shall have obtained an order from a Civil Court directing that such proceedings be stayed, or shall be able to show that a suit has been instituted before such Court to try some question, of such nature that the Collector shall think fit to stay the proceedings until the question shall have been finally decided, or until the proceedings in such Court in respect thereof shall have been terminated.

26. No suit instituted in a Civil Court by any person claiming any right or title in the parent estate, after the lapse of four months from the issue of an order of the Collector under clauses (a) and (b) of section twenty-four, or after the lapse of four months from the issue of an order of the

Collector under section thirty-one declaring the estate to be under partition, shall avail to stay or affect the progress of any proceedings which shall have been taken under this Act for the partition of an estate: and all rights which may be conferred on any person by the final decree in such suit shall be subject to such proceedings in the manner hereinafter provided.

27. Every decree passed in such suit after the parent estate shall have been declared to be under partition as provided in section thirty-one, but before the date specified in the notice under section one hundred and twenty-three, shall be made in recognition of the proceedings then in progress under this Act for the partition of such parent estate, and shall be framed in such manner that the provisions of such decree may be applied to, and may be carried out in reference to the separate estates which the Collector in his proceeding under section thirty-one shall have ordered to be formed out of the parent estate;

and if the effect of any such decree be to declare any person or body of persons entitled to any extent of interest in such parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, such decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceeding, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so declared entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings, be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from such proprietor or body of proprietors by private purchase after the estate was brought under partition under section thirty-one, and on the date on which the decree was passed;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him, or them, of the lands representing the extent of interest so acquired;

and such application shall be dealt with as provided in section thirty-two.

28. Every decree passed after the date specified in the notice under section one hundred and twenty-three, in a suit which was instituted as mentioned in section twenty-six, shall be made in recognition of the partition proceedings, and shall be framed in such manner as to give effect to such division of the parent estate into separate estates as shall have been made by the Collector, and not to disturb such division; and if the effect of any such decree shall be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, such decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors; and every person or body of persons so declared entitled to recover any extent of interest from the

proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only ;

and every such decree as aforesaid shall be executed by placing the person or persons so declared entitled to recover in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the aforesaid decree.

29. Subject to the provisions of section eleven, a Civil Court may at any time direct the Collector to assign to any person lands representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate, or to divide off from any estate any specified villages or lands, and to assign them to any person to be held as a separate estate, provided that an application for such partition and separation shall be presented by such person, as required by sections seventeen, eighteen, and nineteen ; but no Civil Court shall in any case specify the amount of revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable.

30. The Collector shall assess the land revenue on every such separate estate in accordance with the provisions of this Act, and no Civil Court shall direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

31. If no objection be made within the time allowed under section twenty-one to an application for partition, or when all objections have been disposed of, and if the Collector may declare the estate to be under partition. Collector has no reason to believe that any obstacle exists to his making the partition as applied for, he shall direct that the application be admitted, and record a proceeding declaring the estate to be under partition, for the purpose of forming and assigning to the applicant a separate estate.

In such proceeding the Collector shall declare the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants ;

and, if more than one separate application for separation shall have been made and admitted, the extent of interest which he finds to be held by every separate applicant or body of joint applicants respectively ;

and also the extent of interest which remains to any recorded proprietor, or to any number of recorded proprietors who are not applicants ;

and shall order that lands proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants ;

and that lands proportionate to the interest so declared to remain to the recorded proprietor, or the number of recorded proprietors who are not applicants, shall be left forming a separate estate.

32. If at any time after the Collector has made an order for partition

Subsequent application under the last preceding section any recorded proprietor in the estate, other than the original applicant, shall apply for the separation of his share, the

Collector may either order that the proceedings for effecting such separation shall be carried on simultaneously with those for separating the share of the original applicant, or, if he consider that such a course would entail delay in the completion of the original proceedings, he may order that no action shall be taken on such subsequent application until after the proceedings for the separation of the original applicant's share shall have been completed.

In the latter case all or any of the rent-rolls, measurements, and other papers which were used in the separation of the original applicant's share, may be used, as far as they are applicable, in the partition for which subsequent application has been made.

Collector may refer application for partition to any Deputy Collector.

33. The Collector may refer any application for partition to a Deputy Collector for the purpose of making any enquiries and doing anything required by this Part ; provided that every order—

(a) rejecting an application under section twenty-three ;

(b) directing, under section twenty-four, that the partition shall proceed, or shall be postponed ;

(c) directing, under section thirty-one, that an application for partition be admitted, and declaring an estate to be under partition ;

(d) made under the first clause of the last preceding section ;

(e) appointing a Deputy Collector under the next succeeding section to carry out the partition ;

shall be passed by the Collector and not by any Deputy Collector.

As soon as estate declared to be under partition, Collector may appoint Deputy Collector.

34. As soon as the Collector has declared an estate to be under partition as provided in section thirty-one, he may appoint a Deputy Collector to carry out the partition, and all or any of the proceedings necessary thereto.

35. If, at any time after an order shall have been passed for making

Partition may be stayed if parties so desire, Recovery of costs.

a partition, all the recorded proprietors of the estate shall present a petition to the effect that they do not wish the partition to proceed, the Collector may, on the report of the Deputy Collector or otherwise, strike the partition case off the file, on payment by the proprietors of all costs and expenses incurred in and about such partition ; and any such costs and expenses which shall not already have been levied as provided in section thirty-nine or section forty, shall be levied in proportion to the shares of the respective proprietors.

36. If at any time after an order shall have been passed for making a

Partition may be stayed and proceedings quashed by Commissioner.

partition, it shall appear from information which was not before the Collector at the time the partition was ordered, or otherwise, that any sufficient reason exists why the partition should not be proceeded with, the Commissioner may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition should not be struck off the file, and after considering any objections which may be



made, order the partition case to be struck off the file; and in such case any costs and expenses of the partition which shall not already have been levied as provided in section thirty-nine or section forty shall be levied in proportion to the shares of the respective proprietors.

#### PART IV.

OF ESTABLISHMENTS FOR EFFECTING PARTITIONS AND OF THE COST THEREOF.

37. For the purpose of this Act, the Deputy Collector may, with the approval of the Collector, and subject to any rules made in that behalf by the Board, appoint such establishments as may be required for making the measurement and survey of lands, for ascertaining and recording the rates of rent, for making any other local inquiries, for the preparation of the papers, and for other matters in each case; and the Collector may appoint such peshkars or other superior officers as may be required to test the work of the amins, and for the performance of similar duties; provided that the scale of remuneration of such officers, and the time for which they shall be employed, shall be sanctioned by the Commissioner.

38. In any district or division in which partitions may be so numerous or so extensive as to render necessary the appointment of special establishments in the office of the Collector or of the Commissioner, the Collector and the Commissioner may, with the sanction of the Board, appoint such establishments.

39. As soon as possible after an estate has been declared to be under partition as provided in section thirty-one, the cost of making the partition shall be estimated, and the amount shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf.

If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as above provided.

40. The cost shall be apportioned on the proprietors of each share in proportion to their shares; but whenever it shall appear to the Commissioner that the partition proceedings have been unnecessarily delayed, and the cost of the partition chanced by obstacles vexatiously put in the way of their completion by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisitions made upon him or them, the Commissioner may direct that such portion of the cost as he may think proper in excess of the amount proportionate to his or their share shall be levied from such proprietor or proprietors.

41. Whenever any local enquiry may be held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-rolls, or other information which has been laid before the Deputy Collector, the Deputy Collector may declare the cost which has been incurred by such enquiry, and may direct that the entire cost so declared shall be paid by the person making the objection, or by any one of the pro-

prietors, or that such cost shall be paid in such proportions as he shall think fit, by the said person and the proprietors or any of them, or that such cost be deemed a part of the general cost of making a partition as prescribed in section thirty-nine.

42. Upon the completion of the partition, the Collector shall make an order declaring the total cost thereof. The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or by levying from them in the manner provided in section one hundred and thirty-eight, if necessary, any sums remaining due.

43. Whenever it shall appear to the Lieutenant-Governor that in any district the work required to be done by Deputy Collectors in connection with partitions under this Act is so great that such work would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, the Lieutenant-Governor may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district as part of the cost of such partitions, and thereupon such charge as the Collector may think fit to make in respect of such salary shall, in addition to the items mentioned in the last preceding section, be deemed to be a portion of the costs of every partition.

For the purposes of this section the salary of every Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

44. For the purposes of section thirty-nine, forty, and forty-two, the costs of any partition shall be deemed to be

What are costs leviable from proprietors.

(a) the cost of any establishments entertained for the partition under section thirty-seven, or such amount as the Collector may think proper in respect of the services of any such establishments which are entertained for the purposes of making partitions in the district ;

(b) all contingent expenses incurred in and about the partition, and

(c) such portion of the cost of any establishment entertained under section thirty-eight as the Collector may order.

45. Notwithstanding anything contained in the eight last preceding sections, the Lieutenant-Governor may direct that in any district a fund to be called the "Estates' Partition Fund" shall be formed, into which all sums levied from the proprietors of estates in respect of partitions of their estates shall be paid.

Whenever such a fund shall have been established in any district, all expenses of making partitions of estates in such district shall, except as hereinafter otherwise provided, be defrayed from such fund.

46. Whenever the Lieutenant-Governor shall have ordered an "Estates' Partition Fund" to be formed in any district, the charges leviable from the proprietors of any estate under partition may be estimated and levied according to the estimate in each case as provided in sections thirty-nine and forty, subject to final adjustment as provided in section forty-two ; or they may be levied according to a general scale of fees to be fixed by the Board.

Procedure when Estates' Partition Fund formed in any district.

47. Such scale of fees shall be fixed as nearly as may be, so that the receipts and expenditure of the said fund shall balance one another, and shall be revised from time to time by the Board for that purpose.

Scale of fees.

Such fees shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf, and the provisions of section forty shall be applicable to such fees.

Abstract of Estates' Partition Fund to be published.

being posted up at the

48. An abstract of the Estates' Partition Fund of each district made up to the end of each year shall be published in the *Calcutta Gazette*, and by office of the Collector of the district.

What costs of partition chargeable to Estates' Partition Fund.

49. For the purposes of sections forty-five, forty-six, and forty-seven, the expenses of making partitions in any district shall be deemed to be

(a) the cost of all establishments entertained in the district under section thirty-seven ;

(b) all contingent expenses incurred in all partitions in the district ;

(c) the cost of any special establishment appointed in the office of the Collector under section thirty-eight :

(d) such portion as the Commissioner may direct of the cost of any special establishment appointed in his office under section thirty-eight ;

(e) the salary of any one or more Deputy Collectors which the Lieutenant-Governor may have ordered under section forty-three to be recovered from the proprietors of estates under partition.

Civil Court may in certain cases order parties to pay expenses incurred in dividing an estate.

50. Whenever any Civil Court shall make a decree awarding or declaring any proprietary right in an estate, and shall require the Collector to make a partition of the estate, such Court may at the same time direct,

that the party or parties who may have withheld the right so decreed shall defray the whole of the expense which may be incurred in and about the partition, or the whole of the fees payable in respect of the partition under section forty-six,

or that the said expenses or fees shall be defrayed by all or any of the parties to the suit in which the decree was made in such proportions as the Court may, from a consideration of the particular circumstances of the case, deem equitable ;

Copies of all orders which the Court may pass under this section shall be transmitted to the Collector for his guidance, together with the precept which the Court may issue to him requiring him to divide the estate ; and the Collector shall levy the said expenses and fees from the parties in the proportion ordered by such Court in the same manner and by the same means as if the levy of such expenses and fees had been ordered by the Collector.

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## PART V.

OF THE PARTITION PROCEEDINGS UP TO THE ADOPTION OF <sup>A</sup> RENT-ROLL AND MEASUREMENT PAPERS.

51. As soon as the Collector shall have made an order under section thirty-one declaring an estate to be under partition, the Deputy Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four, and shall also cause copies thereof to be posted up at the Court of the Judge of the district in which any lands appertaining to the parent estate are known to be situated, and at the Court of every Munsif and of every sub-divisional officer within the jurisdiction of whom, and at every police station within the jurisdiction of which, any such lands are known to be situated, intimating his intention to proceed with the partition, and requiring all the proprietors of the estate to produce before a certain date, being not less than forty days from the date of such notification, either jointly or separately copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement papers of the estate which may be in their possession.

A notice to the same effect shall also be served as provided in section one hundred and thirty-five on each proprietor of the parent estate.

The Deputy Collector may, on sufficient grounds for so doing being shown to his satisfaction, from time to time extend the period for producing any such return.

52. Every rent-roll, statement of rents collected, and measurement paper furnished to the Collector under this Act shall be presented by the person who is required to produce the same or by a duly authorized agent of such person who has a personal knowledge of the facts stated therein, and shall be subscribed and verified at the foot by such person or such agent in the manner following, or to the like effect :—

“ I, A. B., do declare that this rent-roll (*statement, or measurement paper*) is correct to the best of my knowledge and belief.”

If the rent-roll, statement, or measurement paper shall contain any entry which the person making the verification shall know or believe to be false, or shall not believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

53. If any proprietor who is required to produce any rent-roll or statement by notice as aforesaid is unable to produce such rent-roll or statement, he shall state to the Deputy Collector the cause thereof and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Deputy Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

54. The Deputy Collector may, if necessary, make, or may cause to be made, a measurement of all or any of the lands comprised in the estate, and may prepare or cause to be prepared a rent-roll, and may test or cause to be tested on the spot any rent-roll which has been produced as aforesaid, and

may make or cause to be made any local enquiry which he may consider necessary.

55. Before proceeding or deputing the amin to the spot, the Deputy Collector shall publish a notification in the manner prescribed by section one hundred and thirty-four, requiring the several proprietors of the estate, their managers, and any other persons employed in the management of the land, or otherwise interested therein, to attend in person or by agent upon him, or upon the amin who is deputed to make the measurement or inquiry, for the purpose of pointing out boundaries and of affording such assistance and information as may be required for the purposes of this Act.

56. The Deputy Collector, and any amin or other person who is specially authorized in that behalf by the Collector, may, by a notice served as provided in section one hundred and thirty-five, require any proprietor or other person whose attendance may be required to attend before the Deputy Collector or amin who is making such measurement or enquiry within a specified time at any place for any of the purposes aforesaid.

57. If any objection be made to a measurement, map, or rent-roll prepared by the amin, or if for any other reason it seems desirable, the Deputy Collector shall, as soon as possible after completion of the amin's work, himself test, or shall cause to be tested on the spot, such measurement, map, and rent-roll, and may accept, amend, or reject the same, or any of them. If the Deputy Collector shall deem it necessary, he may cause the work or any portion thereof to be done again.

58. The Deputy Collector may examine any person on solemn affirmation in regard to the papers produced before him, whether by the proprietors, by the amin, or otherwise, and shall allow the parties concerned to put any necessary questions to such person.

The Deputy Collector shall also allow any proprietor or other person interested to examine the papers so produced, and to take a copy of the same, and after such examination shall hear any objections which any of the persons interested may make in respect of such papers, and shall decide whether any, and (if any) which, of the papers as they stand, or with such modifications as he may think necessary, shall be accepted as correct for the purposes of the partition.

59. If any proprietor who has been required to produce a rent-roll or statement under section fifty-one, fails to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, or fails to state to the Deputy Collector the name and address of any person under section fifty-three, the Deputy Collector may declare that the said proprietor shall, for the purposes of the partition, be bound by such rent-roll as the Deputy Collector may adopt as the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

60. If any person who has been required to produce a rent-roll or statement under section fifty-three shall fail to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, the Deputy Collector may declare that the proprietor who may have stated the name of such person under section fifty-three shall, for the purposes of the partition, be bound by the rent-roll which the Deputy Collector may adopt for the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

61. Notwithstanding anything contained in this Act, if it shall appear to the Deputy Collector that any measurements, maps, rent-rolls, or other papers relating to the estate which have been prepared otherwise than for the purposes of the partition, or otherwise than for the purposes of this Act, afford information sufficiently trustworthy to enable him to effect the partition, the Deputy Collector may adopt such information and such papers either wholly or in part for the purposes of the partition, and may dispense with any rent-rolls, maps, or other papers for which he is authorized to call, or which an applicant is required to produce under this Act.

62. No proprietor or other person, who shall have failed to attend in person or by agent during the measurement as required by the notification published under section fifty-five, shall be entitled at any subsequent time to make any objection to such measurement; but the Collector may admit any objection made by such proprietor or person if he think fit, provided that any expense entailed by a local inquiry made in consequence of such subsequent objection shall be paid entirely by such proprietor or person.

63. When the Deputy Collector is finally satisfied that the papers before him, whether rent-rolls, measurement papers, maps, or other papers, are sufficient and sufficiently correct to be accepted or adopted for the purposes of the partition, he shall make an order to that effect, and shall fix a day on which to determine the general arrangement of the partition, and shall publish a notification in the manner prescribed by section one hundred and thirty-four, calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and shall serve a notice to the same effect on each proprietor or his agent.

## PART VI.

### OF PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

64. On the date fixed under the last preceding section, if a petition to that effect signed by all the recorded proprietors shall have been presented, the Deputy Collector may allow such proprietors to make a private partition of the estate amongst themselves on the basis of the papers which

have been accepted or adopted for the purposes of the partition by the Deputy Collector, or may refer the partition to be made by an arbitrator or arbitrators on such basis.

If the proprietors who have elected to make such private partition shall fail to make the same within such time as may be fixed by the Deputy Collector, the Deputy Collector may refer the partition to be made by an arbitrator or arbitrators, or may make the partition himself.

65. Whenever any partition shall have been referred to arbitration, the proceedings shall be conducted in accordance with the provisions of sections 313 to 325 (both inclusive) of Act VIII of 1859 (*an Act for simplifying the procedure of the Court of Civil Judicature not established by Royal Charter*) as far as those provisions are applicable, and except as herein otherwise expressly provided.

66. The arbitrators shall deliver, within a time to be fixed by the Deputy Collector, which time may be further extended by him, a full and complete paper of partition, in such form as may be prescribed by the Board for partitions made by the Collector or Deputy Collector.

67. The arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for their services, the amount of which shall be fixed, with the approval of the Commissioner, by the officer making the reference to arbitration, and shall be considered to form part of the cost of making the partition.

68. Every partition made under the provisions of this Part by the parties, or by arbitrators appointed by them, shall be subject to the approval of the Deputy Collector and to the confirmation of the Collector and the orders of the superior revenue authorities; provided that neither the Deputy Collector nor any other authority shall disallow any partition so made on any other ground than that of fraud, or that, in the opinion of the Deputy Collector or such other authority, the partition cannot be confirmed without endangering the safety of the land revenue.

69. Whenever a partition has been made under the provisions of this Part, the land revenue shall be assessed by the Collector on each separate estate into which the parent estate is divided by such partition in the manner prescribed by section six.

70. If the paper of partition be not delivered within the time fixed by the Deputy Collector, or within any further period to which the time may have been extended, the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

## PART VII.

**OF THE PROCEDURE FROM THE DETERMINATION OF THE GENERAL ARRANGEMENT OF THE PARTITION BY THE DEPUTY COLLECTOR TO THE APPROVAL OF THE PARTITION BY THE COLLECTOR.**

**71.** If no petition shall have been presented under section sixty-four, the Deputy Collector shall, on the date fixed under section sixty-three, or on any other date to which the hearing may have been postponed by a notice posted at the office of the Deputy Collector, consult orally each proprietor present, and endeavour, as far as possible, with the concurrence of the proprietors present, to settle a general arrangement of the partition in accordance with the requirements of this Act.

For this purpose he shall endeavour to obtain from each proprietor an acknowledgment of his acceptance of the rent-roll, map, and any other papers which have been adopted by the Deputy Collector for the purposes of the partition, and shall briefly record the objections of any proprietor who still objects to accept such rent-roll, map, or other papers.

**72.** If, in consequence of any objections made before the Deputy Collector has settled the general arrangement of the partition as provided in the last preceding section, the Deputy Collector considers it necessary to make further inquiry, he may, by notice to the recorded proprietors, postpone the settlement of the general arrangement of the partition to a date being not less than fifteen days from the service of the notice on any proprietor.

**73.** If the objections on account of which the said settlement is postponed are such that the person making the same might have made them on an earlier day, the Deputy Collector may award compensation for attendance to proprietor. Deputy Collector may award to each proprietor, who shall have attended in person or by agent in accordance with the notice, such sum, not exceeding sixteen rupees, as he shall think fit by way of compensation for such attendance.

The sum so awarded shall be paid by the person making the objections as aforesaid, and may be recovered from him in the manner provided by section one hundred and thirty-eight.

**74.** If the objections have already been enquired into and disposed of, or are such as not to render necessary any further inquiry and postponement, or when any objections which may require further enquiry have been disposed of, the Deputy Collector shall record an order to that effect, and, after hearing what each proprietor present may urge, shall hold a proceeding determining the general arrangement of the partition and the mode in which the parent estate shall be divided, and, in a general way, the position of the lands which shall be assigned to each of the separate estates.

In determining the general arrangement of the partition, the Deputy Collector shall be guided by the rules which are laid down in Part VIII, and shall direct the partition to be made in the manner which, in his opinion, is on the whole most in accordance with such rules, and most equitable and most convenient to all parties concerned.



75. The general arrangement of the partition, as determined under the last preceding section, shall be submitted for the sanction of the Collector, who shall by notice fix a date for the consideration of the same, not being less than fifteen days after the publication of the said notice in his office, and after hearing and disposing of any objection which may be preferred, shall pass such orders as he may think proper, setting aside, amending, or approving the general arrangement made by the Deputy Collector.

76. When the general arrangement has been approved by the Collector, the Deputy Collector shall proceed to fix the exact boundaries of each separate estate, after considering the wishes which the parties may express in respect thereof.

77. When the Deputy Collector shall have so determined the boundaries, he shall cause to be drawn up a paper of partition specifying in detail the villages and lands which he has included in each of the separate estates, the rental thereof, with any other assets of each separate estate, the name or names of the recorded proprietor or proprietors of each separate estate, any stipulations which may have been made regarding places of worship, tanks, or other matters as mentioned in Part VIII, and the amount of land revenue to be assessed on each separate estate; he shall also prepare a map showing the lands which fall within each separate estate and the boundaries thereof, unless the preparation of such map shall be dispensed with by special permission of the Collector.

78. The Deputy Collector shall submit the partition paper and map as aforesaid and all other papers of the partition to the Collector with a full report of the proceedings taken, the reasons which influenced the Deputy Collector in selecting the lands included in each separate estate, the nature of the accounts upon which the apportionment of the land revenue assessed thereon has been based, and all other particulars material to the case.

Deputy Collector to prepare extracts of partition papers for each proprietor.

79. The Deputy Collector shall at the same time cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,

and shall cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate;

and the Deputy Collector shall publish a notice at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as above mentioned, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper herein mentioned.

80. On receipt of the papers and report mentioned in section seventy-

On receipt of papers  
and report Collector to  
publish notification.

eight, the Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four fixing a date, not being less than six weeks from the date of the publication of such notification on the parent estate, on which he will proceed to take up the case, and to consider any representations and objections which may be preferred in respect of the partition made by the Deputy Collector, and calling on all parties concerned who may wish to do so, to inspect the papers at his office before such date, and to take copies of any such papers as they may require.

The Collector shall also cause a notice to the same effect to be served on each of the recorded proprietors.

81. On the date so fixed, or on any other date to which the hearing

Procedure of Collector  
thereupon.

may have been postponed, the Collector shall take into consideration the papers as laid before him, and after calling for any further information which he may deem necessary, and disposing of any objections which shall be made to the proposed partition and allotment of land revenue, may approve the partition as made by the Deputy Collector with such amendments as he may think proper, or return it for amendment to the Deputy Collector who made it, or to another Deputy Collector, or make a fresh partition himself.

The Collector may return the said papers for amendment or enquiry as often as he may think fit.

82. No proprietor who shall have failed to appear before the Deputy

Proprietor when not  
entitled to make subse-  
quent objection.

Collector in person or by agent on any date fixed for the arrangement of the partition under section sixty-three or section seventy-two, and no proprietor who shall have failed so to appear before the Collector on any date fixed under either of the two last preceding sections, shall be entitled, at any subsequent time, to make any objection to the orders which may be passed on such dates respectively.

83. When the Collector approves the partition made by the Deputy

Collector may cause a  
fresh partition paper and  
map to be prepared.

Collector with amendments, he may cause a fresh partition paper and map to be prepared, or may cause the amendments made by him to be noted on the paper and map submitted by the Deputy Collector.

When the Collector makes a fresh partition himself, he shall cause a fresh partition paper and map to be prepared.

84. Whenever the Collector shall have approved a partition (whether

Procedure when Collec-  
tor approves of a partition  
without amendment.

with or without amendments), he shall cause a notice to be served on each of the recorded proprietors that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the date of the service of the said notice, or, if the Collector has approved the partition with amendments, and the notice requires the proprietor to produce the extracts of any partition in order that amendments may be noted thereon, or to take out a fresh extract from the partition paper, as provided in the next succeeding section, then within six weeks of such date.

85. Whenever the Collector shall have approved a partition with amendments, and shall, under section eighty-three, have caused such amendments to be noted on the partition paper and map submitted by the Deputy Collector, the notice to be served on each of the recorded proprietors under the last preceding section shall, in the case of every such proprietor whose separate estate is affected by such amendment, in addition to the particulars mentioned in the said section, require such proprietor to produce before the Collector, within fifteen days of the service of such notice, the extract from the paper of partition which has been prepared, and any map relating to his separate estate which may have been prepared, under section seventy-nine, in order that the amendments made by the Collector in the partition may be noted thereon; and such amendments shall be noted thereon by the Collector accordingly, and such extract and map shall be returned to the proprietor who produced them.

Whenever the Collector shall have caused, under section eighty-three, a new partition paper and map to be prepared, he shall order separate extracts from the portions of the partition paper which relate to each separate estate, and maps, if necessary, to be prepared as required by section seventy-nine, and in such case the notice served under the last preceding section shall, in addition to the particulars mentioned in that section, declare the extracts and maps which were furnished or offered to proprietors under section seventy-nine to be cancelled, and shall require the recorded proprietors to take out of the Collector's office such extracts and maps relating to their respective separate estates.

Papers to be forwarded to Commissioner.

86. As soon as practicable after the issue of the notice under section eighty-four, the Collector shall forward to the Commissioner all papers relating to the partition as approved or as made by the Collector.

## PART VIII.

### OF THE GENERAL PRINCIPLES ON WHICH PARTITIONS SHALL BE MADE.

*Rules applicable to the partition of lands which are held by the proprietors in common tenancy.*

87. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors, and with the other provisions of this Part, but no partition made or approved by a Collector shall be set aside on the ground only that the separate estates are not compact.

Circumstances to be considered in making partitions.

88. In selecting the villages or lands to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from situation; the vicinity of roads, railways, navigable rivers, or canals; the nature and quality of the soil and produce; the quantity of cultivable and uncultivable waste land; the facilities for irrigation; the state of the embankments and water-courses; liability to accretion and diluvion, and any other circumstances affecting the value of the lands.

89. If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of such

Rule when dwelling-house belonging to one proprietor is situated on ground to be allotted to another proprietor.

house may retain occupation thereof with the offices, buildings, and grounds immediately attached thereto, upon agreeing to pay rent for the land occupied by such dwelling-house, offices, buildings, and grounds to the proprietor of the separate estate in which such land is included.

The limits of the land so occupied and the rent to be paid for it in perpetuity shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from his house to some portion of the separate estate allotted to him.

90. Whenever the Deputy Collector shall think fit, he may apply the

Rule contained in last preceding section may be applied to gardens, orchards, &c.

rule contained in the last preceding section to gardens, to orchards of trees to land planted with bamboos, and to any other lands which in his opinion are of special value to the proprietor in whose occupation they are found to be, in consequence of improvements made by such proprietor or of the particular use to which such lands are put.

91. The rent fixed in perpetuity on any land by the Deputy Collector

Calculation of rental.

under either of the two last preceding sections shall be considered to be the rental of such land for the purposes of the partition.

92. Whenever the dwelling-house of one proprietor, with the offices,

Rent may be redeemed.

buildings, and grounds immediately attached thereto, shall have been included in the separate estate of another proprietor, and the annual rent to be paid in perpetuity in respect of the land occupied thereby shall have been fixed by the Deputy Collector and stated in the paper of partition, the proprietor whose dwelling-house, offices, buildings, and grounds have been included as aforesaid may apply to the Deputy Collector for permission to redeem the annual rent so fixed, and the Deputy Collector shall give such permission, unless he shall be of opinion that such redemption would endanger the safety of the land revenue for the payment of which the separate estate in which such dwelling-house, offices, buildings, and grounds have been included will be liable.

93. If the Deputy Collector shall see on such reasons to refuse his

Deputy Collector to certify amount payable in redemption of rent.

permission to the redemption being made, he shall certify the amount payable by such proprietor in redemption of such annual rent; and such amount shall be calculated and fixed by the Deputy Collector at ten per centum above the sum which would be required to purchase, at the market prices then prevailing, so much stock of the Government loan which was last issued as would yield an annual amount of interest equal to the annual land rent fixed by the Deputy Collector under section eighty-nine.

94. The proprietor desiring to redeem the rent as aforesaid, may pay

But not after possession of separate estates has been given.

to the Deputy Collector the amount so certified at any time before possession is given to the several proprietors of the separate estates allotted to each, as provided in section one hundred and twenty-three, but not after such possession has been given.

95. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate such land is situated that such payment has been made, and that the sum will be paid to him or to his authorized agent on application; and that from the date on which possession as aforesaid may be given, the proprietor who has redeemed the rent of such land will be entitled to hold such land as a rent-free tenure secured against the proprietor of the estate and against any auction purchaser at a sale for arrears of revenue, including the Government; and from such date the lands shall be so held as a rent-free tenure.

96. The Deputy Collector shall at the same time also give notice to the Collector of the district of the creation of such tenure; and the Collector of the district shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859, or by any similar law for the time being in force.

97. When two or more of the separate estates shall consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of lands, unless the recorded proprietors of the equal shares shall agree among themselves as to the allotment or the equal separate estates and shall present a petition to that effect; or unless for any other reason the Deputy Collector shall, with the sanction of the Collector, think proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

98. When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate;

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn;

and may cause lots to be drawn in like manner as often as he shall think proper for such purpose.

And after lots shall have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Provided that lots shall in no case be drawn until after full opportunity shall have been given to the proprietors to advance their objections in respect of the papers accepted as the basis of the partition and in respect of the assets of the different lands as stated in such papers, and until any such objections which may have been made shall have been disposed of.

*Illustrations.*

I.—The partition of a parent estate is being made into the following shares :—

8 annas.  
4 annas.  
3 annas.  
1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas, and 1 anna share may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas, and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand, and the proprietors of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas.  
4 annas.  
3 annas.  
2 annas.  
1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share, and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining sharers, and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

99. The Deputy Collector may, by a notice served as provided in

Deputy Collector may require proprietors to attend, or appoint agent for the purpose of drawing lots,

section one hundred and thirty-five, require any proprietor in respect of whose share lots are to be drawn as provided in either of the two last preceding sections, to attend at the office of the Deputy Collector in person or by authorized agent at a time to be fixed by the Deputy Collector for the purpose of drawing lots;

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf; and if at the time fixed for drawing such lots such proprietors have failed to

agree to any such joint appointment, or shall fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

100. Whenever any proprietor or proprietors shall have failed to comply with a requisition of the Deputy Collector in default Deputy Collector may appoint a person to draw lots. Under the last preceding section, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

*Rules applicable to the formation into separate estates of lands which are held by proprietors in severalty.*

101. Whenever in any parent estate a division of the lands thereof has been made by private arrangement of the proprietors of such estate, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in such parent estate, the joint application presented to the Collector by all the recorded proprietors of such estate as required by section twelve may be to the effect that a partition of such estate be made by assigning to each proprietor or to two or more proprietors jointly as his or their separate estate, the lands of which they are in separate possession in accordance with such arrangement, and also that each separate estate so formed be made liable for such portion of the entire land revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

102. The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form are sufficient to secure the payment of the annual amount of land revenue for which it is proposed to make such separate estate liable, and if the Deputy Collector be satisfied that in this respect, and with reference to all the circumstances of the case, the partition of the lands and the assessment of the revenue thereon may be made in the manner proposed without endangering the safety of the revenue, the Deputy Collector shall submit the case with his opinion thereon, and the reasons on which such opinion is founded, to the Collector, who may admit or reject the said application.

103. If the Collector admits the said application, such admission shall be deemed to be the Collector's approval of the general arrangement of the partition as provided in section seventy-five, and the Deputy Collector shall proceed to complete the partition accordingly.

104. If the Deputy Collector, who is appointed to carry out the partition in accordance with a joint application under section one hundred and one, is not satisfied that the partition of the lands and the assessment of the revenue payable thereon can be made in the manner proposed without endangering the safety of the public revenue, or if the Collector rejects the application for such partition, the Deputy Collector shall refuse to make the same.

105. Whenever the proprietors of an estate are, in accordance with a private arrangement as aforesaid, respectively in possession of separate lands held in severalty as representing their respective interests in the estate, the joint application presented to the Collector by all the recorded proprietors of the estate, as required by section twelve, may be to the effect that a partition of such estate be made by assigning to each proprietor, or to two or more proprietors jointly, as his or their separate estate, the lands of which they are in possession in accordance with such arrangement, and that the land revenue for which the parent estate is liable may be apportioned among the separate estates so formed in accordance with the provisions of section six.

A joint application under this section may be made notwithstanding that a joint application under section one hundred and one has been refused in respect of the same estate.

106. Whenever the Deputy Collector who is appointed to carry out a partition shall find that in accordance with a private arrangement made by the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate lands held in severalty as representing portions only of their respective interests in the parent estate, while other lands of the parent estate are held in common tenancy between such proprietors, a joint application as mentioned in section twelve shall not be necessary to authorize the Collector to make a partition of the estate, but the Deputy Collector shall allot to the separate estate of each proprietor the lands of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Lands held in the occupation of the several proprietors of an estate as sir, khamar, or nij jote, or under any other similar denomination, shall not be deemed to be lands held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bond fide* division, by private arrangement among the proprietors, of lands held by tenants.

107. Notwithstanding anything contained in the last preceding section, the Collector may cause any transfer of lands agreed to by the parties to be made from the possession of one proprietor to that of another.

*Rules applicable both to lands held in common tenancy and to lands held in severalty.*

108. Places of worship, burning grounds, and burial grounds which have been held in common previous to the partition of an estate, and lands of which the proceeds have been assigned by the proprietors jointly for religious, charitable, or public purposes, shall continue to be held in common, unless the proprietors shall otherwise agree amongst themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.



Rule as to tanks, wells, water-courses, and embankments.

109. Tanks, wells, water-courses, and embankments shall be considered as attached to the land for the benefit of which they were originally made.

In cases in which, from the extent, situation, or construction of such works it shall be found necessary that they should remain the joint property of the proprietors of two or more of the separate estates, the paper of partition shall specify, as far as the circumstances may admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

110. Whenever the Deputy Collector shall find in the parent estate lands which are actually held rent-free (whether the proprietors of the estate do or do not claim a right to receive rent from such lands), the Deputy Collector shall make no division or assignment of such lands among the separate estates, but shall specify in the partition papers and proceedings that such lands are left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate.

Provided that such lands or any of them may be allotted among the different separate estates with the consent of all the recorded proprietors of the parent estate, but not otherwise.

111. Whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent on a patti or other permanent intermediate tenure falling within Exception 2 or Exception 3 of section seven, the Deputy Collector may either.

Rule as to permanent intermediate tenures.

(1) assign the lands which are held on such tenure and the assets thereof entirely to one or more of the separate estates, the rental being calculated as provided in Exception 2 or in Exception 3 (as the case may be) of section seven ; or

(2) leave such lands unassigned to any separate estate, and specify in the partition paper and proceedings that the lands are left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate. In the event of such lands being so left undivided, the Deputy Collector shall assign to each separate estate such share of the rental of the tenure as shall bear the same proportion to the entire rental of the tenure, as the separate estate bears to the parent estate.

In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the lands comprised in the tenure, and all other circumstances of the case.

112. Whenever any lands are held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common lands of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common lands; and all the provisions of this Act in respect of the allotment between the shareholders in one estate, of lands which are held jointly by such shareholders, shall,

Lands held in common between the proprietors of two or more estates how to be dealt with.

as far as possible, apply to the allotment of the proportionate share of such common lands to the estate under partition ;

and, in respect of the service of notices, hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and the proprietors of all other estates who have an interest in the said common lands, shall be deemed to be joint proprietors of a parent estate consisting only of the lands so held in common.

Provided that all expenses of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be expenses of making the partition of the estate which is under partition, and shall be leviable as provided by this Act from the proprietors of such estate, and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such expenses.

113. Notwithstanding anything contained in the last preceding section, if it shall appear to the Commissioner, on the report of the Collector or otherwise, that the proceedings for such division have been unnecessarily delayed, and the cost of such division enhanced by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him, the Commissioner may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost, and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

114. The allotment to the estate under partition of the proportionate share of the lands so held in common shall be submitted for the approval of the Collector, who may confirm, amend, or reject the same, and in the case of rejection, may make or direct to be made another allotment.

115. As soon as the allotment to the estate under partition of a proportionate share of the said lands shall have been approved by the Collector, the lands so allotted shall be dealt with in every respect as if they were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common lands.

116. If a dispute or doubt shall be found to exist as to whether any lands form part of the parent estate, the Deputy Collector shall enquire into the fact of the possession, and shall report his conclusions, with the reasons thereof, to the Collector ; whereupon

the Collector may (whether the possession of disputed lands is with the proprietors of the parent estate or otherwise) order that the partition be struck off the file, and in that case no application for a partition of the said estate shall be admitted until the applicant can show that the dispute or doubt has been decided by a Court of competent jurisdiction, or has been amicably settled ;

or if the Collector shall find that possession of the disputed lands is with the proprietors of the parent estate, and if it shall appear to him that the claim of the other parties to the right in such lands is untenable, he may order that the partition shall proceed, and that the disputed lands be treated as part of the estate under partition.

Provided that no partition shall be made under this section, if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate would, in the opinion of the Collector, endanger the safety of the land revenue for which such estate would be liable after the partition.

**117.** If after a partition has been completed in accordance with an order passed by the Collector under clause three of the last preceding section, the proprietor of any separate estate shall be dispossessed by a decree of a court of competent jurisdiction of any lands which may have been assigned to his estate by the partition, such proprietor shall not be entitled to claim any modification of the partition (which shall hold good), but shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession ;

and such compensation may be recovered in a court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the order of dispossession does not fall.

## PART IX.

### OF THE PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF THE PARTITION.

**118.** If no appeal or objection shall be presented within the time allowed by section eighty-four, the Commissioner may proceed to consider the case without issue of any notice, and may confirm the partition made by the Collector.

**119.** If it shall appear to the Commissioner that the proceedings of the Collector should be amended, or if a petition of appeal or an objection shall have been presented within the time allowed by section eighty-four, the Commissioner shall fix a day for hearing and disposing of the case, and shall cause a notification of the same to be published and a notice of the same to be posted up in his own office.

**120.** On the day so fixed, which shall not be less than thirty days after the publication of the said notification at the office of the Collector, or on any subsequent day to which the hearing of the case may extend, or on any subsequent day to which the hearing may have been postponed by a notice published in his own office, the Commissioner shall, after hearing

and disposing of all objections, and calling for any further information which may be necessary, either confirm the partition as made by the Collector or amend the same, or return the papers of the partition to the Collector for any changes the Commissioner may think proper to be made.

If the partition is returned to the Collector for amendment, the Collector shall proceed to make the said amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector.

121. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he shall think fit, and as often as he shall so return them, the procedure prescribed in the three last preceding sections shall be followed.

Commissioner may return papers for amendment or inquiry.

122. After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or, if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board determining that the partition as sanctioned by the Commissioner shall not be disturbed, the Collector shall cause to be published in his office, and in some conspicuous place in each of the estates separately constituted by such order, a notice that the partition has been finally confirmed as it was sanctioned by the Commissioner, or with any amendments or alterations, as the case may be.

If the partition as finally sanctioned involves any amendments which may conveniently be made on the extracts of the partition paper and on any maps which have been prepared and delivered or offered by notice to the recorded proprietors as required by section seventy-nine or section eighty-five, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and if the alterations made in the partition as finally sanctioned be such as to make it desirable to prepare fresh extracts and maps as aforesaid, the Collector shall cause such fresh extracts and maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which was furnished or offered to him under section seventy-nine or section eighty-five, as the case may be, to be cancelled, and requiring him to take out of the Collector's office the fresh extract and map which have been prepared.

123. The Collector shall then proceed to give the several proprietors

possession of the separate estates allotted to each, and, if necessary, may require the assistance of the Magistrate in giving such possession ;

and shall cause to be served on every recorded proprietor of a separate estate a notice informing him that from the date specified in such notice the separate estate assigned to him (as described in the extract from the partition paper prepared and delivered or offered to him under section seventy-nine, section eighty-five, or the last preceding section, as the case may be) will be deemed to be separated from the parent estate, and to be separately liable for the amount of land revenue specified in such notice, and calling upon him to enter into a separate engagement for the payment of such revenue.

124. The date specified in such notice, shall not be more than three months after the proprietors have been put in possession of their respective separate estates as herein provided.

Date specified in notice under preceding section.

125. From the date specified in such notice, each separate estate shall be borne on the revenue roll and General Register of the Collector as a distinct estate separately liable for the amount of land revenue assessed upon it under this Act; and shall be so liable, whether the proprietor have executed an agreement for the payment of the amount of land revenue so assessed upon the said estate, or whether he shall have failed to execute such agreement.

Each separate estate to be borne on the revenue roll as separately liable for revenue assessed upon it.

126. The Collector may direct the construction of such boundary marks as he may think proper to distinguish the lands of each separate estate and the cost of such boundary marks shall be deemed to be expenses of the partition.

Collector may direct the construction of boundary marks.

Boundary marks erected under this Act shall be assigned to zemindars, or to zemindars jointly with tenure-holders, for preservation, as provided in the second clause of section 29 of "The Bengal Survey Act, 1875," and after they have been so assigned, the provisions of sections 19, 20, and 52 to 57 (both inclusive) of the said Act shall apply to such boundary marks.

## PART X.

### MISCELLANEOUS.

127. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provisions of sections sixty-five and sixty-seven shall, as far as possible, be applicable to such references.

Any point may be referred to arbitration.

128. If any proprietor of an estate held in common tenancy and brought under partition in accordance with the provisions of this Act shall have given his share or a portion of it in patni or other tenure or lease, such tenure or lease shall hold good, as regards the lands finally allotted to the share of the lessor, and only as to such lands.

Case of proprietor who has created a tenure.

### *Illustrations.*

I.—A, the proprietor of a quarter share in joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every ryot on the estate;

Partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate;

B will become patnidar of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the ryots on that estate.

II.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every ryot on the estate;

Partition of the estate is made under the Act, and certain specific lands are assigned to A as his separate estate ;

B will become patnidar of one-half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every ryot on A's estate, and A will be entitled to collect the other half.

129. If two or more estates shall come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors, after being recorded as proprietors, may apply to have such estates united, and to hold them as a single estate.

130. Such application shall be made in writing to the Collector, and the Collector shall, not less than thirty days after the issue of a notification of such application (provided he see no objection), comply with the same, and cause the necessary entries to be made in the records of his office, and shall report the case to the Commissioner.

131. Whenever any separate estate created under this Act shall fall in arrear so as to require a sale of the land for the discharge of the arrear at any period within twelve years of the date of the confirmation of the partition, the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether such arrear has been caused by any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

132. If it shall be proved to the satisfaction of the Lieutenant-Governor at any time within twelve years from the date of the final confirmation of a partition by the Commissioner or by the Board, as the case may be, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land revenue for which such estate was made liable, or that the amount of land revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate, the Lieutenant-Governor may order a new allotment of the land revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable respecting the same.

133. Whenever the Lieutenant-Governor shall pass an order for the re-allotment of the land revenue on any separate estate under the last preceding section, the Lieutenant-Governor may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter shall be found to have been over-assessed, and in default of payment the amount shall be leviable as provided in section one hundred and thirty-eight.

No order passed by the Lieutenant-Governor under this section shall be liable to be contested in any Court.

134. Every notification required to be published in and by this Act shall, unless it is otherwise specially directed, be published by posting up copies of the same at the office of the Collector, and of the Deputy Collector who is making or has made the partition, at the māl cutcherry or māl cutcherries (if any) of the proprietors of the parent estate, and at one or more of the principal villages on the said estate.

Publication of notifications under this Act.

Service of notice.

135. Every notice in and by this Act required to be served on any person may be served—

(1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person usually resides,

or by delivering the said notice to a general agent of the person to whom such notice is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or

(2) by sending registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to be residing; or

(3) by posting a copy of the notice at any māl cutcherry of the person to whom the notice is directed;

or, if no such māl cutcherry be found, and if the notice cannot be served in any of the other modes mentioned in this section, on some conspicuous place on the estate to which such notice relates.

In all cases where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, service of notice under this section on any one such joint applicant shall be deemed to be good and sufficient service on each and all of such joint applicants.

136. Provided the directions of this Act be in substance and effect complied with, no proceedings under this Act shall be affected by reason of any mistake or by reason of any other informality, unless any person has suffered, or is in danger of suffering, material injury in consequence of such mistake or informality;

No proceedings under this Act to be affected by any mistake or misdescription.

and no proceedings under this Act shall be affected by reason of the omission to issue any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required to be served.

137. If any proprietor or other person shall fail to comply, within the time fixed by a notice served on him as by this Act provided, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees;

and such fine shall be payable daily until the requisition is complied with, and the Collector or Deputy Collector may proceed from time to time to levy the amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending.

Fine in case of non-compliance with notice or requisition.

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by authority of the Commissioner.

Fees, &c., to be deemed a demand under Bengal Act VII of 1868.

deemed to be demands.\*

138. Except as herein expressly otherwise provided, all fees, fines, costs, and other sums ordered to be paid by any person under this Act, shall be

139. For the purpose of any enquiry under this Act, the Collector and Deputy Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses, to examine witnesses, and to compel the production of documents by the same means (as far as may be), and in the same manner as is provided in the case of a Court under the Code of Civil Procedure.

140. All powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector; and whenever it is provided by this Act that any act done, or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, if such act shall have been done or such order shall have been made by the Collector, it shall be deemed to have been sanctioned by the Collector, or to have been confirmed by the Collector in appeal, as the case may be.

141. The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of the parent estate.

Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

142. An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector.

(a) directing, under section forty-one, by whom the costs of an enquiry held in consequence of an objection preferred shall be paid;

(b) accepting or adopting any papers under section sixty-three for the purposes of a partition;

(c) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators;

(d) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity;

(e) refusing, under section one hundred and four, to make a partition as applied for the joint applicants;



(f) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure ;

(g) imposing a fine under section one hundred and thirty-seven.

143. An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of the Collector (whether such order be passed by the Collector in the first instance, or in appeal from the order of a Deputy Collector)

(a) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted ;

(b) directing, under section thirty-one, that an application for partition or separation be admitted ;

(c) accepting or adopting any papers under section sixty-three for the purposes of a partition ;

(d) refusing, under sixty-eight, to confirm a partition made by the parties or by arbitrators ;

(e) setting aside, amending, or approving the general arrangement of the partition under section seventy-five ;

(f) approving, with or without amendment, a partition made by a Deputy Collector, or directing such partition to be amended or a fresh partition to be made, or making a fresh partition under section eighty one ;

(g) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity ;

(h) refusing, under section one hundred and two, to allow a partition to be made in accordance with an existing private division ;

(i) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure ;

(k) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates ;

(l) passed under section one hundred and sixteen as to disputes or doubts regarding land ;

(m) imposing or confirming the imposition of a fine under section one hundred and thirty-seven ;

(n) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

144. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner which confirms, modifies, or reverses any order of the Collector

(a) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceed-

ings for effecting a partition or separation after the application has been admitted ;

(b) directing, under section thirty-one, that an application for partition or separation be admitted ;

(c) accepting or adopting any papers under section sixty-three for the purposes of a partition ;

(d) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition, of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates ;

and against every order of the Commissioner

(e) directing, under section forty, that any proprietor shall pay more than his proportionate share of the expenses of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;

(f) directing, under section one hundred and thirteen, that any sum shall be paid by the proprietor of an estate other than the estate under partition, when such sum exceeds five hundred rupees ;

(g) confirming, under section one hundred and eighteen or section one hundred and twenty, or amending or setting aside under section one hundred and twenty, a partition as made by the Collector ;

(h) imposing, or confirming the imposition of any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

145. Except as provided in the three last preceding sections, no

No appeal to lie against any order passed under this Act, appeal shall lie as of right against any order passed under this Act by any officer ; but the proceedings and orders of every Deputy Collector under this Act shall be subject to the supervision and control of the Collector ; the proceedings and orders of every Deputy Collector and of the Collector to the supervision and control of the Commissioner ; and the proceedings and orders of all revenue officers, to the supervision and control of the Board ;

and any order passed and anything done under this Act may be modified, amended, or reversed by the supervising and controlling authority at any time before possession of their respective separate estates has been given to the several proprietors as provided in section one hundred and twenty-three, but not after such possession has been given, except as provided in the next succeeding section.

146. Any proceedings of a revenue officer connected with giving

Proceedings connected with giving possession may be set aside within three months of date of giving possession, possession to the proprietors of their respective separate estates as provided in section one hundred and twenty-three, may be set aside or amended as above provided by any supervising and controlling revenue authority, provided that such supervising and controlling authority shall within three months of the date on which such possession may have been given, make an order to the effect that such proceedings are under the consideration of such authority.

Such order shall be communicated to the Collector of the district, who shall cause the same to be published by notification in the manner prescribed by section one hundred and thirty-four.

147. The Commissioner and the Board may pass such orders as they shall think fit in respect on the payment of costs of any appeal which is made to them respectively under this Act.

148. If, in any case in which a Collector or other officer shall exercise jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same, as are vested by the Code of Criminal Procedure in a civil court, when any such offence is committed before or against such court, or when a document believed to be a forgery is given in evidence in any proceedings in such court.

Orders of revenue officer which are not liable to be set aside by civil suit.

149. No order of a revenue officer

(a) refusing to allow a partition on the grounds mentioned in section eleven ;

(b) rejecting or directing to be amended an application under section twenty ;

(c) made under the first clause of section thirty-two :

(d) made under Part IV, Part V, Part VI, Part VII, Part VIII (except as provided in the next succeeding section), or Part IX ;

(e) imposing a fine ;

(f) in respect of the payment of costs of any appeal under section one hundred and forty-seven,

shall be liable to be contested or set aside by a suit in any court, or in any manner other than as is expressly provided in this Act.

When suit may be brought to set aside order of revenue officer.

150. Notwithstanding anything contained in clause (d) of the last preceding section,

any person claiming a greater interest in any lands which were held in common tenancy between two or more estates than has been assigned to him by the order of a revenue officer under section one hundred and twelve or section one hundred and fourteen ;

and any person who is aggrieved by any order of a revenue officer passed under section one hundred and sixteen :

May bring a suit in a court of competent jurisdiction to modify or set aside such orders of the revenue officer.

151. In the execution of the duties vested in the Board by this Act the Board shall be guided by such orders or instructions as they may from time to time receive from the Lieutenant-Governor.

Board to be guided by instructions of Lieutenant-Governor.

152. The Board may, from time to time, make rules, not being inconsistent with this Act—

Board may lay down rules.

(a) to regulate the expenses of effecting partitions, or the amount of fees to be levied in respect of partitions, the allotment of the same amount

the proprietors, and the instalments, in which, and the times at which, the same shall be levied under Part IV ;

(b) to regulate the receipts, disbursements, and management of any " Estates' Partition Fund" formed under section forty-five ;

(c) to regulate the employment and remuneration of amins and other subordinate officers appointed under Part IV, to enable the officer making the Partition to keep himself informed of the proceedings of such officers, and to exercise a proper control over them ;

(d) to regulate the form in which the partition papers shall be framed under section sixty-six and section seventy-seven ;

(e) and generally for the guidance of officers in conducting partitions under this Act.

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### SCHEDULE.

*See Section 2.*

Number and year.	Subject or abbreviated title.	Extent of repeal.
Regulation XI of 1811.	For extending period of revising jumma on certain lands.	So much as has not been repealed.
Regulation XIX of 1814.	Consolidating Regulations respecting Partition of Estates.	Ditto.
Act XX of 1836 ...	Quashing of Butwarra ...	Ditto.
Act XI of 1838 ...	Remuneration of persons effecting a partition.	Ditto.

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# THE SPECIFIC RELIEF ACT, 1887.

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## CONTENTS.

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### PREAMBLE.

### PART I. Preliminary.

	SECTIONS.
Short title	1
Local extent.	
Commencement.	
Repeal of enactments	2
Interpretation-clause	3
Savings	4
Specific relief how given	5
Preventive relief	6
Relief not granted to enforce penal law	7

---

### PART II. Of Specific Relief.

---

#### CHAPTER I.

##### OF RECOVERING POSSESSION OF PROPERTY.

##### (a.) *Possession of Immoveable Property.*

Recovery of specific immoveable property	8
Suit by person dispossessed of immoveable property	9

##### (b.) *Possession of Moveable Property.*

Recovery of specific moveable property	10
Liability of person in possession, not as owner, to deliver, to person entitled to immediate possession	11

#### CHAPTER II.

##### OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

##### (a.) *Contracts which may be specifically enforced.*

Cases in which specific performance enforceable	12
Contracts of which the subject has partially ceased to exist	13

## SECTIONS.

Specific performance of part of contract where part unperformed is small	14
Specific performance of part of contract where part unperformed is large	15
Specific performance of independent part of contract	16
Bar in other cases of specific performance of part of contract	17
Purchaser's rights against vendor with imperfect title	18
Power to award compensation in certain cases	19
Liquidation of damages not a bar to specific performance	20
(b.) <i>Contracts which cannot be specifically enforced.</i>	
Contracts not specifically enforceable	21
(c.) <i>Of the Discretion of the Court.</i>	
Discretion as to decreeing specific performance	22
(d.) <i>For whom Contracts may be specifically enforced.</i>	
Who may obtain specific performance	23
(e.) <i>For whom Contracts cannot be specifically enforced.</i>	
Personal bars to the relief	24
Contracts to sell property by one who has no title, or who is a voluntary settler	25
(f.) <i>For whom Contracts cannot be specifically enforced, except with a Variation.</i>	
Non-enforcement except with variation	26
(g.) <i>Against whom Contracts may be specifically enforced.</i>	
Relief against parties and persons claiming under them by subsequent title	27
(h.) <i>Against whom Contracts cannot be Specifically enforced.</i>	
What parties cannot be compelled to perform	28
(i.) <i>The Effect of dismissing a Suit for Specific Performance.</i>	
Bar of suit for breach after dismissal	29
(j.) <i>Awards and Direction to execute Settlements.</i>	
Application of preceding sections to awards and testamentary directions to execute settlements	30

## CHAPTER III.

## OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified	31
Presumption as to intent of parties	32
Principles of rectification	33
Specific enforcement of rectified contract	34

## CHAPTER IV.

## OF THE RESCISSION OF CONTRACTS.

## SECTIONS.

When rescission may be adjudged	...	...	...	35
Rescission for mistake	...	...	...	36
Alternative prayer for rescission in suit for specific performance	...	...	...	37
Court may require party rescinding to do equity	...	...	...	38

## CHAPTER V.

## OF THE CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered	...	...	...	39
What instruments may be partially cancelled	...	...	...	40
Power to require party for whom instrument is cancelled to make compensation	...	...	...	41

## CHAPTER VI.

## OF DECLARATORY DECREES.

Discretion of Court as to declarations of status or right	...	...	...	42
Bar to such declaration.	...	...	...	43
Effect of declaration	...	...	...	43

## CHAPTER VII.

## OF THE APPOINTMENT OF RECEIVERS.

Appointment of Receivers discretionary	...	...	...	44
Reference to Code of Civil Procedure.	...	...	...	44

## CHAPTER VIII.

## OF THE ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts	...	...	...	45
Exemptions from such power.	...	...	...	45
Application how made	...	...	...	46
Procedure thereon.	...	...	...	46
Order in alternative.	...	...	...	46
Peremptory order	...	...	...	47
Execution of, and appeal from, orders	...	...	...	48
Costs	...	...	...	49
Bar to issue of <i>mandamus</i>	...	...	...	50
Power to frame rules	...	...	...	51



PART III.  
Of Preventive Relief.

---

CHAPTER IX.  
OF INJUNCTIONS GENERALLY.

	SECTIONS.
Preventive relief how granted     ...     ...     ...	... 52
Temporary injunctions     ...     ...     ...	.. 53
Perpetual injunctions	

---

CHAPTER X.  
OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted     ...     ...     ...	... 54
Mandatory injunctions     ...     ...     ...	... 55
Injunction when refused     ...     ...     ...	... 56
Injunction to perform negative agreement     ...     ...     ...	... 57

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SCHEDULE.—Enactments repealed.

# ACT NO. I OF 1877.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 7th February 1877.)*

## An Act to define and amend the law relating to certain kinds of Specific Relief.

Whereas it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suit ; It is hereby enacted as follows :—

### PART I.

#### Preliminary.

- |                        |  |
|------------------------|--|
| Short title.           | 1. This Act may be called "The Specific Relief Act, 1877."   |
| Local extent.          | It extends to the whole of British India, except of Scheduled Districts as defined in Act No. XIV of 1874 ;                              |
| Commencement.          | And it shall come into force on the first day of May 1877.   |
| Repeal of enactments.  | 2. On and from that day the Acts specified in the schedule hereto annexed shall be repealed to the extent mentioned in its third column. |
| Interpretation-clause. | 3. In this Act, unless there be something repugnant in the subject or context,—  |
| ‘obligation.’          | ‘obligation’ includes every duty enforceable by law :  |
| ‘trust.’               | ‘trust’ includes every species of express, implied, or constructive fiduciary ownership :  |
| ‘trustee.’             | ‘trustee’ includes every person holding, expressly, by implication, or constructively, a fiduciary character :                           |

#### Illustrations.

(a). Z bequeaths land to A, 'not doubting that he will pay thereout an annuity of Rs.1,000 to B for his life.' A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b). A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(c). A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(d). A, the mortgagee of certain lease holds, renews the lease in his own name. A is trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e). A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

(f). A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g). A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h). A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

'Settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destitutiou or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract—

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Indian Registration Act on documents.

Specific relief how given,

5. Specific relief is given;

(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

## PART II.

## Of Specific Relief.

## CHAPTER I.

## OF RECOVERING POSSESSION OF PROPERTY.

*(a) Possession of Immoveable Property.*

Recovery of specific im-  
moveable property.

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

*(b) Possession of Moveable Property.*

Recovery of specific  
moveable property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

*Illustrations.*

(a). A bequeaths land to B for his life, with remainder to C, A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b). A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c). A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d). A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e). A, a ware-house-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

#### *Illustrations.*

of clause (a)—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (b)—Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (c)—A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

## CHAPTER II.

### OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

#### *(a) Contracts which may be specifically enforced.*

Cases in which specific Performance enforceable.

12. Except as otherwise provided in this chapter, the specific performance of any contract may in the discretion of the Court be enforced—

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done:

(c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

**EXPLANATION.**—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

#### *Illustrations.*

\* \* \* \* \*

of clause (b)—A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause(c)—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (d)—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

#### *Illustrations.*

(a). A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b). In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

#### *Illustrations.*

(a). A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b). In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

*Illustrations.*

(a). A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b). A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(a) if the vendor or lessor have subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

**EXPLANATION.**—The circumstance that the contract has become incapable of specific performance, does not preclude the Court from exercising the jurisdiction conferred by this section.

#### *Illustrations.*

of the second paragraph :—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph :—A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation :—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.



*Illustration.*

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

*(b).—Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable. 21. The following contracts cannot be specifically enforced:—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(c) a contract the terms of which the Court cannot find with reasonable certainty;

(d) a contract which is in its nature revocable;

(e) a contract made by trustees either in excess of their powers or in breach of their trust;

(f) a contract made by or on behalf of a corporation of public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And save as provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

*Illustrations.*

to (a).—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India:

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest:

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

to (b).—A contracts to render personal service to B:

A contracts to employ B on personal service:

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed:

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B.

The above contracts cannot be specifically enforced.

to (c).—A, the owner of refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (d).—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to (e).—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (f).—A company existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (g).—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (h).—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c).—*Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary, Discretion as to decree- and the Court is not bound to grant such relief ng specific performance. merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

*Illustrations.*

(a.) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b.) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c.) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

*Illustrations.*

(e.) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(f.) A and B, trustees, join beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g.) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h). A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i). A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j). A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k). A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

*Illustration.*

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d).—*For whom Contracts may be specifically enforced.*

Who may obtain specific performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(a) any party thereto ;

(b) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(e) a reversioner in possession, where the agreement is a covenant, entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;

(f) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;

(g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e).—*For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

- (a) who could not recover compensation for its breach ;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

*Illustrations.*

to clause (a).—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause (b).—A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner : he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause (c).—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

*Illustrations.*

(a). A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b). A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c). A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d). A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f)—*For whom Contracts cannot be specifically enforced except with a Variation.*

26. Where a plaintiff seeks specific performance of a contract in Non-enforcement except writing, to which the defendant sets up a variation, with variation. the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

(a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ;

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it .

*Illustrations.*

(a.) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b.) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract induced an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c.) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d.) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e.) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place : B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(f) — *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

(a) either party thereto ;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant ;

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(e) when the promoters of a public company have, before its incorporation, entered into a contract, the company : provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

*Illustrations.*

to clause (b).—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c).—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(h)—*Against whom Contracts cannot be specifically enforced.*

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

*Illustrations.*

to clause (c).—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i).—*The effect of dismissing a Suit for specific Performance.*

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal.

(j).—*Awards and Directions to execute Settlements.*

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

## CHAPTER III.

### OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified;

When instrument may be rectified.



and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

*Illustrations.*

(a). A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b). By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assignees, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract. 34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

*Illustration.*

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

## CHAPTER IV.

### OF THE RESCISSION CONTRACTS.

35. Any person interested in a contract \* may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

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\* Act IV. of 1882.

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the court may by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

#### *Illustrations.*

to (a).—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b).—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36. Rescission of a contract \* cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Alternative prayer for rescission in suit for specific performance.

Court may require party rescinding to do equity.

## CHAPTER V.

### OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

*Illustrations.*

(a). A, the owner of a ship, by fraudulently representing her to be seaworthy, induces, B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b). A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c). A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.

(d). A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

*Illustration.*

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER VI.

## OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do.

Bar to such declaration.

**EXPLANATION.**—A trustee of property is a 'person interested to deny' a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

*Illustrations.*

(a). A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b). A bequeaths his property to B, C and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c). A covenants that if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d). A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(e). The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond widow's life-time.

(f). A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g). A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h). A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

#### *Illustration.*

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

## CHAPTER VII.

### OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

## CHAPTER VIII.

## OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature :

provided—

(a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act ;

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character ;

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;

(d) that the applicant has no other specific and adequate legal remedy ; and

(e) that the remedy given by the order applied for will be complete.

Exemptions from such power. Nothing in this section shall be deemed to authorize any High Court—

(j) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal ;

(g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown ; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof ; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made,

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the Act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

48. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

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## PART III.

### Of Preventive Relief.

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#### CHAPTER IX.

##### OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court.

They may be granted at any period of a suit and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the

assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

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#### CHAPTER X.

##### OF PERPETUAL INJUNCTIONS.

54. Subject to the other provisions contained in, or referred to by this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

Perpetual injunctions when granted.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) Where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

**EXPLANATION.**—For the purpose of this section a trademark is property.

*Illustrations.*

(a). A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b). A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c). The Directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d). The Directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e). A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f). A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g). A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h). In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i). A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j). A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k). A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l). A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m). A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n). A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o). A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p). The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q). A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets, B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r). A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s). A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t). A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u). A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v). A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w). A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x). A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y). A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.



(z). A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

*Illustrations.*

(a). A by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b). A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c). In the case put as illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d). In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e). A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f). A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g). In the cases put as illustrations (v) and (w) to section 54, and as illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused. 56. An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(c) to restrain persons from applying to any legislative body;

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(e) to stay proceedings in any criminal matter;

(f) to prevent, the breach of a contract the performance of which would not be specifically enforced;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(h) to prevent a continuing breach in which the applicant has acquiesced ;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust ;

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court ;

(k) where the applicant has no personal interest in the matter.

*Illustrations.*

(a). A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b). A manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c). A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

**57. Notwithstanding section 56, clause (f), where a contract comprises**

Injunctions to perform an affirmative agreement to do a certain act, negative agreement. coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement ; provided that the applicant has not failed to perform the contract so far as it is binding on him.

*Illustrations.*

(a). A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b). A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c). A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d). B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(c). A contract with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

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### SCHEDULE.

(See section 2.)

#### ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
VIII of 1859 ...	Civil Procedure ...	Sections 15 and 192.
XIV of 1859 ...	Limitation ...	Section 15.
XXIII of 1861 ...	Civil Procedure ...	Section 26.
IX of 1872 ...	Contract ...	In section 28, the second clause of exception 1.

# **THE INDIAN REGISTRATION ACT 1877.**

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## **PART I.—Preliminary.**

- „ **II.—Of the Registration-Establishment.**
  - „ **III.—Of Registrable Document.**
  - „ **IV.—Of the time of Presentation.**
  - „ **V.—Of the Place of Registration.**
  - „ **VI.—Of presenting Documents for Registration.**
  - „ **VII.—Of enforcing the Appearance of Executants and Witnesses.**
  - „ **VIII.—Of presenting Wills and authorities to adopt.**
  - „ **IX.—Of the Deposit of Wills.**
  - „ **X.—Of the Effects of Registration and Non-registration.**
  - „ **XI.—Of the Duties and Powers of Registering Officers.**
  - „ **XII.—Of Refusal to Register.**
  - „ **XIII.—Of the Fees for Registration Searches and Copies.**
  - „ **XIV.—Of Penalties.**
-



# ACT NO. III OF 1877.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 14th February, 1877)*

## An Act for the Registration of Documents.

Whereas it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows :—

Preamble.

### PART I.

#### PRELIMINARY.

Short title. 1. This Act may be called "The Indian Registration Act, 1877."

Local extent. It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation ;

Commencement. And it shall come into force on the first day of April 1877.

Repeal of enactments. 2. On and from that day Act No. VIII of 1871 shall be repealed.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877, to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation clause. 3. In this Act, unless there be something repugnant in the subject or context—

"Lease." "Lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease:

"Signature." "Signed." "Signature" and "signed" include and apply to the affixing of a mark :

"Immoveable property." "Immoveable property." "Immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to

the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass :

“Moveable property” includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property :

“Book” includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

“Endorsement” and “endorsed” include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

“Minor,” “Minor” means a person who, according to the personal law to which he is subject, has not attained majority :

“Representative.” “Representative” includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot :

“Addition” means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father’s name, or where he is usually described as the son of his mother, then his mother’s name :

“District Court.” “District Court” includes the High Court in its ordinary original civil jurisdiction ; and

“District.” “District” and “Sub-District” respectively mean a district and sub-district formed under this Act.

## PART II.

### OF THE REGISTRATION-ESTABLISHMENT.

Inspector General of Registration. 4. The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

Districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public Registrars and Sub-Registrars or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,

Offices of Registrar and Sub-Registrar.

and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called Inspectors of Registration offices. Inspectors of Registration offices. They may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Military cantonments may be declared sub-districts or districts.

Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector General, and in the case of a district, what authority shall be Inspector General, with reference to such cantonment and the Sub-Registrar or Registrar thereof.

10. Whenever any Registrar other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

Absence of Registrar from his district or vacancy in his office.

any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate.



shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

Absence of Registrar on duty in his district.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Sub-Registrar or vacancy in his office.

13. All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs. The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Appointments under sections 10, 11 or 12 to be reported to Government.

Suspension, removal and dismissal of officers.

14. Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

Remuneration and establishments of registering officers.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—  
“The seal of the Registrar (or of the Sub-Registrar) of . . .”

Seals of registering officers.

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Register-books.

The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Forms.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

Fire-proof boxes

## PART III.

## OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or Act No. XX of 1866, or Act No. VIII of 1871, or this Act, came or comes into force (that is to say),—

(a) Instruments of gift of immoveable property :

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

(c) Non-testamentary instruments which acknowledge the receipt of payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and

(d) Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

Exception of Nothing in clauses (b) and (c) of this section applies to

composition deeds ; (e) any composition-deed ;

and of transfers of (f) any instrument relating to shares in a Joint shares and debentures in Stock Company, notwithstanding that the assets of Land Companies ; such Company consist in whole or in part of immoveable property, or

(ff') any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or".\*

(g) any endorsement upon or transfer of any debenture issued by any such Company ;

(h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will when executed create, declare, assign, limit or extinguish any such right, title or interest ;

\* Act VII of 1886.

(i) decrees and orders of Courts and awards ;  
 (j) grants of immoveable property by Government ;  
 (k) instruments of partition made by revenue-officers ;  
 (l) orders granting loans\* and instruments of collateral security granted under the Land Improvement Act, 1871.

"(m) orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act."†

"(n) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage."‡

"(o) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.‡

Authorities to adopt. Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered.

Documents of which registration is optional. 18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property :

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest :

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 :

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property :

(e) wills :

(f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

20. The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

\* Act XIX of 1883.

† Act VII of 1886.

‡ Act VII of 1888

If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

21. (a) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(b) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c) No non-testamentary document containing a map or plan of any Documents containing property comprised therein shall be accepted for maps or plans. registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22. Failure to comply with the provisions contained in section 21, clause (b), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

## PART IV.

### OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no Time for presenting document other than a will shall be accepted for documents. registration unless presented for that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final :

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

24. If owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, Provision where delay in presentation is unavoidable. in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

- (a) that the instrument was so executed, and  
 (b) that it has been presented for registration within four months after its arrival in British India,  
 may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Provision where office is closed on last day of period for presentation.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

Wills may be presented or deposited at any time.

## PART V.

### OF THE PLACE OF REGISTRATION.

28. Save as in this Part otherwise provided, every document mentioned in section 17, clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Every document other than a document referred to in section 28 and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (a) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(b) The registrar of a district including a Presidency-town and the Registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

Place for registering documents relating to land.

Place for registering other documents.

Registration by Registrar.

Registration by Registrar at Presidency-town and Lahore.

Registration or acceptance for deposit at private residence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

But such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

## PART VI.

### OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,

Persons to present documents for registration.

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers-of-attorney recognizable for purposes of section 32.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—

(a) If the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at

any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section :—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. A will or an authority to adopt, presented for registration by  
Registration of wills and authorities to adopt. the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead, and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

## PART IX.

### OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorized agent,  
Deposit of wills. deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. On receiving such cover, the Registrar, if satisfied that the person  
Procedure on deposit of wills. presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw  
Withdrawal of sealed cover deposited under section 42. it, he may apply either personally or by duly authorized agent to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. If, on the death of a testator who has deposited a sealed cover  
Proceedings on death of depositor. under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

Re-deposit. When such copy has been made, the Registrar shall re-deposit the original will.

46. Nothing hereinbefore contained shall affect the provisions of the  
Saving of Act X of 1865, section 259. Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

## PART X.

## OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, and relating to any property whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

49. No document required by section 17 to be registered, shall effect any immoveable property comprised therein,

or confer any power to adopt,

or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

50. Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (e), (f), (ff), (g), (h), (i), (j), (k), (l), (m), (n), and (o), of the same section.\*

*Explanation.*—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under Act No. VIII of 1871 or this Act.

## PART XI.

## OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A). *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

51. The following Books shall be kept in the several offices hereinafter named (that is to say)—

In all registration-offices—

Book I, “Register of non-testamentary documents relating to immoveable property;”

\* Act VII of 1886, and Act VII of 1888.



Book 2, "Record of reasons for refusal to register,"

Book 3, "Register of wills and authorities to adopt," and

Book 4, "Miscellaneous Register."

In the offices of Registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89\* which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it: a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III, and Index No. IV.

Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

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\* Sec. 105, Act No. XII of 1879,

Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Extra particulars in Indexes Nos. I, II, III and IV shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

56. Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar. Every Registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and subject to the provisions of section 62, copies of entries in such Books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain Books and Indexes, and to give certified copies of entries. Subject to the same provisions, copies of entries in Book No. 3 and in the index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B). *As to the Procedure on admitting to Registration.*

58. On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89,\* there shall be endorsed from time to time the following particulars (that is to say),—

(a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

60. After such of Certificate showing that document has been registered, and number and page of book in which it has been copied.

the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

Power to administer oaths.

63. Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

He may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering office.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C). *Special Duties of Sub-Registrar.*

64. Every Sub-Registrar on registering a non-testamentary document

Procedure on registration of document relating to land situate in several sub-districts.

relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

65. Every Sub-Registrar on registering a non-testamentary document

Procedure where document relates to land situate in several districts.

relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D). *Special Duties of Registrar.*

66. On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure on registering documents relating to land.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. On any document being registering under section 30, clause (b), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

Procedure on registration under section 30, clause. (b).

Registrar to superintend and control Sub-Registrars.

(E). *Of the controlling Powers of Registrars and Inspectors General.*

68. Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Registrar to superintend and control Sub-Registrars.

is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

69. The Inspector General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

Inspector General to  
superintend registration-  
offices.  
His power to make rules.

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept ;

declaring what languages shall be deemed to be commonly used in each district ;

declaring what territorial divisions shall be recognized under section 21 ;

regulating the amount of fines imposed under sections 24 and 34, respectively ;

regulating the exercise of the discretion reposed in the registering officer by section 63 ;

regulating the form in which registering officers are to make memoranda of documents ;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively ;

declaring the holidays that shall be observed in the registration-offices ;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette, and shall then have the same force as if they were inserted in this Act.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

His power to remit fines.

## PART XII.

### OF REFUSAL TO REGISTER.

Reasons for refusal to re-  
gister to be recorded.

71. Every Sub-Registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document ; and on application made by any person executing or claiming under

the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

**72.** Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order ; and the Registrar may reverse or alter such order :

and if the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60 ; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where Sub-Registrar refuses to register on ground of denial of execution.

**73.** When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

**74.** In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, he shall as soon as conveniently may be enquire—

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

**75.** If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Refusal by Registrar. 76 Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the Registrar refuses to order the document to be registered,

*Suit in case of refusal.* under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 57 shall, *mutatis mutandis*, apply to all documents so presented, and notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

### PART XIII.

#### OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

*Fees to be fixed by Local Government.* 78. Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

for the registration of documents ;  
for searching the registers :  
for making or granting copies of reasons, entries or documents, before, on or after registration :

And of extra or additional fees payable—

for every registration under section thirty :  
for the issue of commissions :  
for filing translations :  
for attending at private residences :

for the safe custody and return of documents :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

The Local Government may from time to time, subject to the like approval, alter such table.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the

Publication of fees. Vernacular language of the district shall be exposed, to public view in every registration-office.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

## PART XIV.

### OF PENALTIES.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Whoever commits any of the following offences shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both :

Penalty for certain other offences.

(a) intentionally makes any false statement, whether on oath or not and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act;

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act ;

False personation.

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

Registering officer may commence prosecution.



Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second\* class ;

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts.

84. Every registering officer appointed under this Act shall be deemed

Registering officers to be a public servant within the meaning of the Indian Penal Code.  
deemed public servants.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

† Repealed by Act XII of 1891.

## PART XV.

### MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registra-

Destruction of unclaimed documents.

tion-office, for a period exceeding two years, may be destroyed.

Registering officer not liable for thing *bonâ fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act, or any Act

Nothing so done invalidated by defect in appointment or procedure.

hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be neces-

Registration of documents executed by Government officers or certain public functionaries.

sary for any Officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or Official Assignee, or for the Sheriff, Receiver or Registrar of a High

Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit,

\* Section 106, Act No. XII of 1879.

† Act XII of 1891.

refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting a loan\* under the Land Improvement Act, 1871, shall send a copy of his order\* to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy† in his Book No. 1.‡

Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.‡

Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immovable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1.‡

§ Every Revenue-officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No 1.

#### *Exemptions from Act.*

90. Nothing contained in this Act or in Act No. VIII of 1871 or in

Exemption of certain documents executed by or in favour of Government.

any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps :—

(a) Documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

(b) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c) Documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records.

(d) Sanads, ināms title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land.

\* Act XIX of 1883.

† Section 107, Act No. XII of 1879.

‡ Act VII of 1886.

§ Act XII of 1891.

(e) Notices given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, of relinquishment of occupancy by occupants or of alienated land by holders of such land.\*

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c), and (e)\* and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. All rules relating to registration heretofore enforced in British Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

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\* Act VII of 1886.

# **THE INDIAN LIMITATION ACT, 1877.**

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## **CONTENTS.**

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**PART I.—Preliminary.**

- „ **II.—Limitation of Suits, Appeals and Applications.**
- „ **III.—Computation of Period of Limitation.**
- „ **IV.—Acquisition of Ownership by Possession.**

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## **FIRST SCHEDULE.**

### **REPEALS.**

## **SECOND SCHEDULE.**

**I.—Suits.—II.—Appeals.—III.—Applications.**



# ACT NO. XV OF 1877.

*As amended by Acts No. XII. of 1879 and No. VIII of 1880.*

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Act No. XV of 1877 received the assent of the Governor General on the 19th of July, 1877 : Act No. XII of 1879 received the assent of the Governor General on the 29th of July, 1879 and Act No. VIII of 1880 received the assent of the Governor General on the 12th of March, 1880.)*

An Act for the Limitation of Suits, and for other purposes.

Whereas it is expedient to amend the law relating to the limitation of suits, appeals and certain applications to Courts ;  
Preamble. and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property ;  
It is hereby enacted as follows :—

## PART I.

### PRELIMINARY.

Short title. 1. This Act may be called “ The Indian Limitation Act, 1877 :”

It extends to the whole of British India ; but nothing contained in sections two and three or in Parts II and III applies—  
Extent of Act.

- (a) to suits under the Indian Divorce Act, or
- (b) to suits under Madras Regulation VI of 1831 ;

Commencement. and it shall come into force on the first day of October, 1877.

### 2. *Repealed by Act XII of 1891.\**

All references to the Indian Limitation Act, 1871, shall be read as if made to this Act ; and nothing herein or in that Act contained shall be deemed to affect any title acquired or to revive any right to sue barred, under that Act or under any enactment thereby repealed ; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.  
References to Act IX of 1871.  
Saving of titles already acquired.  
Saving of Act IX of 1872, s. 25.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—  
‘ plaintiff ’ includes also any person from or through whom a plaintiff derives his right to sue ; ‘ applicant, includes also any person from or through whom an applicant derives his right to apply ; and ‘ defendant ’ includes also any person from or through whom a defendant derives his liability to be sued :

\* Act XII of 1891.

'easement' includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or any thing growing in, or attached to, or subsisting upon, the land of another :

'bill of exchange' includes also a hundi and a cheque :

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligations shall be void if a specified act is performed, or is not performed, as the case may be :

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

'trustee' does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

'suit' does not include an appeal or an application :

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

'foreign country' means any country other than British India ;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

## PART II.

### LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

4. Subject to the provisions contained in sections 5 to 25 (inclusive), Dismissal of suits, &c., every suit instituted, appeal presented, and application instituted, &c., after period of limitation. therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

*Explanation.*—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is filed ; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

#### *Illustrations.*

(a). A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The appellate Court must dismiss the suit.

(b). An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens :

Proviso where Court is closed when period expires.

Any appeal or application for review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

\*5A. Whenever it is shown to the satisfaction of the Court that an appeal or an application for a review of judgment was presented after

the period of limitation prescribed for such appeal or application owing to the appellant or applicant having been misled by any order, or practice, or judgment of the High Court of the Presidency, Province or District, such appeal or application, if otherwise in accordance with the law, shall for all purposes be deemed by all courts to have been presented within the period of limitation prescribed therefor.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability had ceased, he is affected by another disability, he may institute the suit or make an application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of preemption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

#### *Illustrations.*

(a). The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b). A, to whom a right to sue for a legacy has accrued during the minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(c). A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d). A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e). A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.



(f). A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

*Illustrations.*

(a). A incurs debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b). A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Continuous running of time. 9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, shall be barred by any length of time.

11. Suits instituted in British India on contracts entered into a foreign country are subject to the rules prescribed by this Act.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

## PART III.

### COMPUTATION OF PERIOD OF LIMITATION.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such right to sue accrues. period is to be reckoned shall be excluded.

In computing the period of limitation prescribed for an appeal, an application for a leave to appeal as a pauper, and an application for review of judgment, the day on which the judgment complained of was pronounced, Exclusion in case of appeals and certain applications.

and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

Like exclusion in case of order under Civil Procedure Code, s. 20

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief, shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it:

Like exclusion in case of application.

*Explanation 1.*—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

*Explanation 2.*—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued, or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which commencement of suit is stayed by injunction or order.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale, shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application,

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration.

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment in writing of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

*Explanation 1.*—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

*Explanation 2.*—In this section “signed” means signed either personally or by an agent duly authorized in this behalf.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or when part of the principal of a debt, is before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

Effect of part-payment of principal.

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

One of several joint contractors, &c., not chargeable by reason of acknowledgment or payment made by another of them.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

Effect of substituting or adding new plaintiff or defendant.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff :

Proviso where original plaintiff dies.

Provided also, that when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

Proviso where original defendant dies.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

#### *Illustrations.*

(a). A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b). A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

*Illustrations.*

(a). A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after the date computed according to the Gregorian calendar.

(b). A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

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## PART IV.

### ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

Acquisition of right to easements.

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

*Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

*Illustrations.*

(a). A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(b). In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed that right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c). In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

27. Provided that, when any land or water upon, over, or from which

any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the

Exclusion in favour of reversioner of servient tenement.

continuance of such interest or term shall be excluded in the computation of the said last mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years ; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after B's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person  
 Extinguishment of right to property. for instituting a suit for possession of any property, his right to such property shall be extinguished.

### THE FIRST SCHEDULE.

(See Section 2).

Number and year of Acts.	Title.	Extent of repeal.
X of 1865      ...	The Indian Succession Act.	In section 321, the words "within two years after the death of the testator, or one year after the legacy has been paid."
IX of 1871      ...	The Indian Limitation Act, 1871.	The whole.
X of 1877      ...	The Code of Civil Procedure.	Section 599, and in section 601 the words "within thirty days from the date of the order."

### THE SECOND SCHEDULE.

(See Section 4).

#### FIRST DIVISION : SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 ( <i>to provide for the adjudication of claims to waste-lands.</i> )	<i>Part 1.</i> Thirty days	When notice of the award is delivered to the plaintiff.

## THE SECOND SCHEDULE—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	<i>Part II.</i> Ninety days	When the act or omission takes place.
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	<i>Part III.</i> Six months	When the dispossession occurs.
4.—Under Act No. IX of 1860 ( <i>to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers,</i> ) section one.	Ditto ...	When the wages, hire or price of works claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, chapter XXXIX ( <i>of summary procedure on negotiable instruments</i> ).	Ditto ...	When the instrument sued upon becomes due and payable.
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	<i>Part IV.</i> One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a house hold servant, artisan or labourer not provided for by this schedule, No. 4.	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging ...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person against whom an order is passed under section 280, 281, 282 or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.	Ditto ...	The date of the order.

## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>12.—To set aside any of the following sales :—</p> <p>(a) sale in execution of a decree of a Civil Court ;</p> <p>(b) sale in pursuance of a decree or order of a Collector or other officer of revenue ;</p> <p>(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ;</p> <p>(d) sale of a patni taluq sold for current arrears of rent.</p>	<p><i>Part IV.—</i> <i>Contd.</i> One year ...</p>	<p>When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.</p>
<p><i>Explanation.</i>—In this clause ‘patni’ includes any intermediate tenure saleable for current arrears of rent.</p>		
<p>13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.</p>	<p>Ditto ...</p>	<p>The date of the final decision or order in the case by a Court competent to determine it finally.</p>
<p>14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.</p>	<p>Ditto ...</p>	<p>The date of the act or order.</p>
<p>15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.</p>	<p>Ditto ...</p>	<p>When the attachment, lease or transfer is made.</p>
<p>16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.</p>	<p>Ditto ...</p>	<p>When the payment is made.</p>
<p>17.—Against Government for compensation for land acquired for public purposes.</p>	<p>Ditto ...</p>	<p>The date of determining the amount of the compensation.</p>
<p>18.—Like suit for compensation when the acquisition is not completed.</p>	<p>Ditto ...</p>	<p>The date of the refusal to complete.</p>
<p>19.—For compensation for false imprisonment.</p>	<p>Ditto ...</p>	<p>When the imprisonment ends.</p>
<p>20.—By executors, administrators or representatives under Act No. XII of 1855 (to enable executors, administrators or representatives to sue and be sued for certain wrongs.)</p>	<p>Ditto ...</p>	<p>The date of the death of the person wronged.</p>



## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
21.—By executors, administrators or representatives under Act No. XIII of 1855 ( <i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.</i> )	<i>Part IV.—</i> Contd. One year ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel ...	Ditto ...	When the libel is published.
25.—For compensation for slander ...	Ditto ...	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	<i>Part V.</i> Two years	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ...	When the perversion first becomes known to the person injured thereby.
33.—Under Act No. XII of 1855 ( <i>to enable executors, administrators, or representatives to sue and to be sued for certain wrongs</i> ) against an executor, administrator or other representative.	Ditto ...	When the wrong complained of is done.
34.—For the recovery of a wife. ...	Ditto ...	When possession is demanded and refused.

## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
35.—For the restitution of conjugal rights.	<i>Part V.—</i> Contd. Two years	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance or nonfeasance takes place.
37.—For compensation for obstructing a way or a watercourse.	<i>Part VI.</i> Three years	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.—To restrain waste ...	Ditto ...	When the waste begins.
42.—For compensation for injury caused by the injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or 321, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Ditto ...	When the ward attains majority.
45.—To contest and award under any of the following Regulations of the Bengal Code :— VII of 1822, IX of 1825, and IX of 1833.	Ditto ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	The date of the final award or order in the case.

THE SECOND SCHEDULE.—*Continued.*FIRST DIVISION : SUITS—*Continued.*

Description of suit.	Period of limitation.	Time from which period begins to run.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, chapter XL, or the Bombay Mamlatdars Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	<i>Part VI.</i> — Contd. Three years	The date of the final order in the case.
48.—For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto ...	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	Ditto ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto ...	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
57.—For money payable for money lent	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.

## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Contd.</i>	
59.—For money lent under an agreement that it shall be payable on demand.	Three years	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Ditto ...	When the demand is made.
61.—For money payable to the plaintiff • for money paid for the defendant.	Ditto ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ...	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives or the contingency happens.
66.—On a single bond where a day is specified for payment.	Ditto ...	The day so specified.
67.—On a single bond where no such day is specified.	Ditto ...	The date of executing the bond.
68.—On a bond subject to a condition ...	Ditto ...	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.

## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Contd.</i> Three years	The date of the bill or note.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment as to the part then payable ; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto ...	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto .	The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto ...	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.
82.—By a surety against a co-surety ...	Ditto ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually indemnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.

THE SECOND SCHEDULE.—(*Continued.*)FIRST DIVISION : SUITS.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Contd.</i>	
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last item admitted or proved is entered in the account ; such year to be computed as in the account.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premium paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account ...	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	Ditto.
90.—Other suits by principals against agents for neglect or misconduct	Ditto ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto ...	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto ...	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto ...	The date of the failure.

## THE SECOND SCHEDULE—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Contd.</i>	
98.—To make a good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years.	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto ...	When the right to contribution accrues.
101.—For a seaman's wages ...	Ditto ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower ( <i>mu'ajjal</i> ).	Ditto ...	When the dower is demanded and refused, or, (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower ( <i>mu'ajjal</i> ).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto ...	When the profits are received, or where the plaintiff has been dispossessed by a decree afterwards set aside on appeal when he recovers possession.

THE SECOND SCHEDULE.—(*Continued.*)FIRST DIVISION : SUITS.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
110.—For arrears of rent	<i>Part VI.—</i> Contd. Three years.	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ...	When the call is payable.
113.—For specific performance of a contract.	Ditto ...	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto ..	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
116.—For compensation for the breach of a contract in writing registered.	<i>Part VII.</i> Six years	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Ditto ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Ditto ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto ...	When the rights of the adopted son as such are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	When the right to sue accrues.



## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a <i>patni taluq</i> or other saleable tenure sold for arrears of rent.	<i>Part VIII.</i> Twelve years	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in British India, or a recognizance.	Ditto ...	The date of the judgment or recognizance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto ...	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ...	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation</i> .—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindû or Muhammadan female by a Hindû or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Ditto ...	The date of the alienation.
126.—By a Hindû governed by the law of the Mitaksharâ to set aside his father's alienation of ancestral property.	Ditto ...	When the alienee takes possession of the property.
127.—By a person excluded from joint-family property to enforce a right to share therein.	Ditto ...	When the exclusion becomes known to the plaintiff.
128.—By a Hindû for arrears of maintenance.	Ditto ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto ...	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Ditto ...	When the plaintiff is first refused the enjoyment of the right.

## THE SECOND SCHEDULE.—(Continued.)

## FIRST DIVISION : SUITS.—(Continued.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>132.—To enforce payment of money charged upon immoveable property.</p> <p><i>Explanation.</i>—The allowance and fees respectively called <i>mālikāna</i> and <i>haqq</i>s shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.</p>	<p><i>Part VIII.</i> Contd. Twelve years.</p>	<p>When the money sued for becomes due.</p>
<p>133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.</p>	<p>Ditto ...</p>	<p>The date of the purchase.</p>
<p>134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration.</p>	<p>Ditto ...</p>	<p>Ditto.</p>
<p>135.—Suit instituted in a Court not established by a Royal Charter by a mortgagee for possession of immoveable property mortgaged.</p>	<p>Ditto ...</p>	<p>When the mortgagor's right to possession determines.</p>
<p>136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.</p>	<p>Ditto ...</p>	<p>When the vendor is first entitled to possession.</p>
<p>137.—Like suit by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale.</p>	<p>Ditto ...</p>	<p>When the judgment-debtor is first entitled to possession.</p>
<p>138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.</p>	<p>Ditto ...</p>	<p>The date of the sale.</p>
<p>139.—By a landlord to recover possession from a tenant.</p>	<p>Ditto ...</p>	<p>When the tenancy is determined.</p>
<p>140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.</p>	<p>Ditto ...</p>	<p>When his estate falls into possession.</p>
<p>141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.</p>	<p>Ditto ...</p>	<p>When the female dies.</p>

THE SECOND SCHEDULE.—(*Continued.*)FIRST DIVISION : SUITS.—(*Continued.*)

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.</i> Contd	
142.—For possession of immoveable property, when the plaintiff, while the possession of the property, has been dispossessed or has discontinued the possession.	Twelve years.	The date of the dis-possession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto ...	When the possession of the defendant becomes adverse to the plaintiff.
	<i>Part IX.</i>	
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years.	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage debt
	<i>Part X.</i>	
147.—By a mortgagee for foreclosure or sale.	Sixty years.	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto ...	When the right to redeem or to recover possession accrues.
		Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto ...	When the period of limitation would begin to run under this Act against a like suit by a private person.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days.	The date of the sentence,

THE SECOND SCHEDULE.—(*Continued.*)

## SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.
152.—Under the Code of Civil Procedure, to the Court of a District Judge.	Thirty days.	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure, to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code, to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days.	Ditto.
156.—Under the Code of Civil Procedure, to a High Court, except in the cases provided for by No. 151 and No. 153.	Ninety days	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure, from a judgment of acquittal.	Six months	The date of the judgment appeal against.

## THIRD DIVISION : APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure, to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under chapter XXXIX of the Code of Civil Procedure.	Ditto ...	When the summons is served.
160.—For an order under section 629 of the same Code, restoring to the file a rejected application for review.	Fifteen days.	When the application for review is rejected.
* 161.—For the issue of a notice under section 258 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Twenty days.	When the payment or adjustment is made.

\* Sec. 106 Act XII of 1879.

## THE SECOND SCHEDULE—(Continued.)

## THIRD DIVISION : APPLICATIONS.—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay, in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order.
163.—By a plaintiff, for an order to set aside a dismissal by default.	Thirty days	The date of the dismissal.
164.—By a defendant, for an order to set aside a judgment <i>ex parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.
165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dispossession.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court. *	Ditto ...	The date of the sale.*
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto ...	The date of the resistance, obstruction or dispossession.
168.—For re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
169.—For re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Ditto ...	The date of the decree in appeal.
170.—For leave to appeal as a pauper ...	Ditto ...	The date of the decree appealed against.
171.—Under section 371 of the Code of Civil Procedure, or under that section and section 582 of the same Code, for an order to set aside an order for abatement or dismissal.	Sixty days	The date of the order for abatement or dismissal.

## THE SECOND SCHEDULE.—(Continued.)

## THIRD DIVISION : APPLICATIONS.—(Continued.)

Description of application.	Period of limitation.	Time from which period begins to run.
172.—By a purchaser at an execution-sale, to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Sixty days	The date of the sale.
173.—For a review of judgment, except in the cases provided for by No. 162.	Ninety days	The date of the decree or order.
173.A *—For the issue of a notice under section 258 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Ditto ...	When the payment or adjustment is made.
174.—By a creditor of an insolvent judgment-debtor, under section 353 of the Code of Civil Procedure.	Ditto ...	The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months	The date of the decree.
175A.—Under section 365 of the Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff-appellant or defendant-appellant.	Ditto ...	The date of the death of the deceased plaintiff or of the deceased plaintiff-appellant or defendant-appellant.
175B.—Under section 366 of the Code of Civil Procedure by a defendant, or under that section and section 582 of the same Code by a plaintiff-respondent or defendant-respondent.	Ditto ...	The date of the death of the deceased plaintiff or of the deceased defendant-appellant or plaintiff-appellant.
175C.—Under section 368 of the Code of Civil Procedure to have the legal representative of a deceased defendant made a defendant, or under that section and section 582 of the same Code to have the legal representative of a deceased plaintiff-respondent or defendant-respondent made a plaintiff-respondent or defendant-respondent.	Ditto ...	The date of the death of the deceased defendant or of the deceased plaintiff-respondent or defendant-respondent.
176.—Under the Code of Civil Procedure section 516 or 525, that an award be filed in Court.	Ditto ...	The date of the award.
177.—For the admission of an appeal to Her Majesty in Council.	Ditto ...	The date of the decree appealed against.

THE SECOND SCHEDULE.—(*Continued.*)THIRD DIVISION : APPLICATIONS.—(*Continued.*)

Description of application.	Period of limitation.	Time from which period begins to run.
178.—Application for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230.	Three years.	When the right to apply accrues.
179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.	Ditto ; or where a certified copy of the decree or order has been registered, six years.	1 The date of the decree or order, or 2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3 (where there has been a review of judgment) the date of the decision passed on the review, or 4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or 5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or 6 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.*

*Explanation I.*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.

*Explanation II.*—“Proper Court” means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.

THE SECOND SCHEDULE.—(*Concluded.*)THIRD DIVISION : APPLICATIONS.—(*Concluded.*)

Description of appliaction.	Period of limitation.	Time from which period begins to run.
<p>180.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.</p>	Twelve years	<p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right :</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money, has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.</p>





# ACT NO. IX OF 1879.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

*(Received the assent of His Honor on the 15th April 1879, and of the Governor-General on the 6th June 1879.)*

An Act to amend the law relating to the Court of Wards.

Whereas it is expedient to amend the law relating to the Court of Wards within the territories under the administration of the Lieutenant-Governor of Bengal; It is enacted as follows :—

## PART I.

### PRELIMINARY.

1. This Act may be called the Court of Wards' Act, 1879.

It extends to all the territories under the administration of the Lieutenant-Governor of Bengal, including the scheduled districts of Bengal as defined in the Scheduled Districts' Act, 1874.

It shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

2. Bengal Act IV of 1870 (the Court of Wards' Act), section 11 of Act XXXV of 1858, sections 12, 14, and 15 of Act XL of 1858, and so much of section 21, of Act XL of 1858 as provides that the Civil Court may direct the Collector to take charge of an estate, are hereby repealed.

All persons and properties which at the commencement of this Act are under the charge of the Court of Wards as constituted by Bengal Act IV of 1870, shall be deemed to be under the charge of the Court of Wards as constituted by this Act.

And all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the Civil Court under section 11 of Act XXXV of 1858, or under section 12, section 14, or section 21 of Act XL of 1858, shall from such commencement be deemed to be under the charge of the Court of Wards.

And all rules, prescribed, orders or appointments made and agreements executed under the Court of Wards Act, 1870, and now in force, shall (so far as they are consistent with this Act) be deemed to be respectively prescribed, made, and executed under this Act.

And all orders and appointments made by Collectors under Act XXXV of 1858 or Act XL of 1858, and now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

and all suits and proceedings now pending, which may have been commenced under the Court of Wards' Act, 1870, or by Collectors under Act XXXV of 1858 or Act XL of 1858, shall be deemed to be commenced under this Act.

Interpretation.

"Collector."

"Court."

or when the Court of Wards has delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated;

"Estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue; and includes a share in or of an estate other than an undivided share held in coparcenary as the property of a Hindu joint family governed by the Mitakshara or Mithila law.

"Estate."

"Minor."

"Section."

"Ward."

3. In this Act, unless there be something repugnant in the subject or context—

"Collector" includes any officer in charge of the revenue jurisdiction of a district;

"The Court" means the Court of Wards;

"Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated;

"Estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue; and includes a share

in or of an estate other than an undivided share held in coparcenary as the property of a Hindu joint family governed by the Mitakshara or Mithila law.

"Minor" means a person who has not completed

his age of twenty-one years;

"Section" means a section of this Act;

"Ward" means any person who is under the

charge of the Court of Wards, or whose property is

under such charge.

4. Nothing contained in this Act shall affect any

of the provisions of Act XXXIV of 1858 or the

jurisdiction, as respects infants, of any High Court

of Judicature.

Saving of Act XXXIV  
of 1858 and of jurisdiction  
of High Courts.

## PART II.

### CONSTITUTION, JURISDICTION, AND POWERS OF THE COURT OF WARDS.

Board of Revenue to be  
Court of Wards.

5. The Board of Revenue shall be the Court of Wards for the territories to which this Act extends.

It shall deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court, in accordance with the provisions of this Act.

Disqualified proprietors.

6. Proprietors of estates shall be held disqualified to manage their own property when they are—

(a) females declared by the Court incompetent to manage their own property;

(b) persons declared by the Court to be minors;

(c) persons adjudged by a competent Civil Court to be of unsound mind, and incapable of managing their affairs;

(d) persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property.

\*(e) persons as to whom the Local Government has declared on their own application that they are disqualified, and that it is expedient in the public interest that their estates should be managed by the Court.

7. Whenever the sole proprietor of an estate, or all the joint-proprietors of an estate are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction, and of the person of any such proprietor or joint proprietor who is resident within its jurisdiction; and also of the person and property of any minor member of the family of any such proprietor or joint proprietor who has an immediate or reversionary interest in the property of such proprietor or joint proprietor. Provided that the Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application under clause (e) of section 6.

8. Whenever the circumstances of any ward become such that the Court when bound to Court could not take charge of him or of his property if he were not under its charge already, the Court shall be bound to release from its charge such person and his property.

9. The Court may in its discretion, in any case in which it is empowered by this Act to take charge of the person and property of any disqualified proprietor,—

- (a) take charge of such property without taking charge of such person;
- (b) refrain from taking charge of any such person or property;
- (c) at any time withdraw from such charge if taken;
- (d) at any time resume such charge, after having withdrawn from it.

\*And in any case in which the Court has taken charge of the property of a person disqualified from managing his own estate under the provisions of section 6, clause (e) it may in its discretion—

- (e) at any time withdraw from such charge, or
- (f) retain such charge, notwithstanding the death of the proprietor, until all debts and liabilities incurred by, or due from, the said proprietor, or which are a charge upon the property or any part thereof, together with all interest due thereon, have been discharged:

Provided that, after the death of the proprietor the Court shall not retain charge on account of any debt or liability which has been declared by a competent Civil Court not to be binding on the representative of such deceased proprietor.

10. Whenever a Civil Court is satisfied that an order should be made under section 7 of the Guardians and Wards Act, 1890, appointing a guardian of the person or property of a minor or both;

Whenever a Civil Court removes under section 39 of the same Act the guardian of a minor;

or whenever a person has been adjudged, under Act XXXV of 1858, to be of unsound mind and incapable of managing his affairs,

if the property of such minor or disqualified proprietor consists, in whole or in part, of land or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor; and it shall be at the discretion of the Court of Wards to take charge of such person and property, or to refuse to do so.

Nothing contained in sections 12 to 19 (both inclusive) of Act XXXV of 1858 shall be held to apply to persons or properties under the charge of the Court of Wards.

\*11. Whenever one or more of the joint proprietors of whose properties the Court has taken charge ceases to be subject to the jurisdiction of the Court, the Court may retain charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification.

And, in case any person entitled to any property jointly with any disqualified proprietor shall consent thereto, the Court may retain or resume the charge of the property of such proprietor or any part thereof so long as the property of any such disqualified proprietor as aforesaid remains in charge of the Court.

12. The Court of Wards may at any time withdraw from the charge of any person and property taken under section 10 by Court. or under section 11, and from the charge of any person or property which either before or after the commencement of this Act was or is placed ; under the charge of the Collector by a Civil Court under section 12, section 14, or section 21 of Act XL of 1858, or under section 11 of Act XXXV of 1858 : or under any other enactment for the time being in force

Provided that it shall give notice of its intention to withdraw to the Civil Court concerned, and that such notice shall be given not less than two months before the Court of Wards shall so withdraw.

13. Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such property, or may retain charge of the same until the right to possession of the claimant has been determined under Bengal Act VII of 1876, or until the dispute has been determined by a competent Civil Court.

General power of Court. 14. Subject to the provisions of this Act the Court—

(a) may, through its manager, do all such things requisite for the proper care and management of any property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Civil Court, as the proprietor of any such property, if not disqualified, might do for its care and management, and

(b) may, in respect of the person of any ward, do all such things as might be lawfully done by the legal guardian of such ward.

15. The Court may exercise all or any powers conferred on it by this Act through the Commissioners of the divisions and the Collectors of the districts in which any part of the property of the disqualified proprietor may be situated, or through any other person whom it may appoint for such purpose.

The Court may, with the sanction of the Lieutenant-Governor, from time to time delegate any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time with the like sanction revoke such delegation.

16. †The Court may from time to time order such establishments to be entertained and expenses to be incurred as it shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for

\* Act IV of 1892.

† Act III of 1881 (B. C)

all the purposes of this Act, and may order that such expenses, inclusive of all salaries, gratuities, and payments on account of the leave allowances of such establishments, be charged against any one or more properties for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

17. *\*Repealed by Act X of 1892.*

18. The Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward.

19. If the Court thinks it expedient to direct the sale or mortgage of any part of an estate of which the ward is the sole proprietor, it may order the Collector, to partition off such part into a separate estate, and the demand of land revenue and of the cesses for which the original estate was liable shall be assessed upon and divided between the two separate estates so formed, respectively, in such manner as the Court, with the sanction of the Lieutenant Governor, may direct.

20. The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward under the charge of the Court, and may control and remove any manager or guardian so appointed.

On any disqualified proprietor becoming a ward, the Court may, at its discretion, confirm or refuse to recognize any appointment of a person to be guardian of such disqualified proprietor which may have been made by a will.

21. The Court may make such orders as to it may seem fit in respect of the custody, education, and residence of a minor ward, and such minor members of the ward's family as are under its charge, and in respect of the custody and residence of any ward, not being a minor, whose person is under the charge of the Court.

22. The Court shall allow, for the support of each ward and of his family, such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

23. \* *Clause 1.*—Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act XI of 1859, every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or under section 70 of Bengal Act VII of 1876, shall be exempt from sale for arrears of Government revenue which have accrued whilst such estate, share or part has been under the charge of the Court.

Provided that all such arrears of revenue shall be the first charge upon the sale proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

*Clause 2.*—If at the time when such estate, share, or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a Manager, or by farming it for a period not exceeding five years as he may think it.

Provided that when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector, and the Collector after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management, due up to the date of making such deduction, shall release such estate, share or part from attachment and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

23A. Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in section 23 of this Act contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court, may at any time be sold under the provisions of the law for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interests of the ward require that such estate, share or part to be so sold and has stated in such writing the reasons upon which it has arrived at such conclusion.

### PART III.

#### PROTECTION FROM SALE OF CERTAIN ESTATE.

24. No estate the sole property of a minor or of two or more minors, and descended to him or them, by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first

charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of the Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49, or in section 50.

## PART IV.

### ASCERTAINMENT OF DISQUALIFICATION.

27. Whenever any Collector has reason to believe that any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such inquiry as he may deem necessary, and if satisfied that such person should be so declared or adjudged, shall make a report of the same to the Court;

and the Court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient.

28. Nothing in section 27 shall prevent the Court or the local Government from putting the provisions of this Act in force without any report from the Collector.

29. Whenever any Collector receives information that the sole proprietor of an estate which is borne on the revenue roll of his district has died, or that the sole proprietor of any estate has died within his district,

and such Collector has reason to believe that the heirs of such proprietor should be declared or adjudged to be disqualified under section 6, he may take such steps and make such orders for the safety and preservation of the moveable property of such heirs, and of all deeds, documents, or papers relating to the property of such heirs, as to him may seem fit.

Such Collector may call upon any other Collector in whose jurisdiction any such moveable property, or any such deeds, documents, or papers may be, to take charge of the same, and thereupon such other Collector shall



have the same powers with respect to such property, deeds, documents, and papers within his district as are conferred by this section on the first-mentioned Collector.

If the property is not afterwards taken under the charge of the Court, all expenses incurred by a Collector acting under this section shall be recoverable as arrears of revenue from the owner of such property or the person or persons whom the Collector shall find to be in possession of such property, and shall constitute a demand under Bengal Act VII of 1868, or any similar law for the time being in force.

30. A Collector acting under the last preceding section may direct that any person who has the custody of a minor proprietor, and order for his temporary custody, such minor before such Collector or before any other Collector on a day fixed, and the Collector before whom the minor is so produced may make such order for the temporary custody and protection of such minor as to him may seem fit.

If the minor is a female, she shall not be brought into the presence of the Collector, but the Collector may take such steps for her identification as he may think fit.

31. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be of unsound mind and incapable of managing his affairs, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply, in pursuance of the provisions of Act XXXV of 1858, to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

32. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be incapable of managing his property on the ground of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the district within which such person may be residing; and upon such Collector so applying, such Civil Court shall enquire into and determine the question as to the alleged incapacity.

33.—If a sole proprietor of an estate who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of judicature at Fort William in Bengal, or resident beyond the territories administered by the Lieutenant-Governor of Bengal, shall be reported by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the 24-Pergunnahs, or to such other Civil Court as the Lieutenant-Governor, on application made to him by the Collector in that behalf, may determine.

Such Civil Court shall thereupon enquire into and determine the question as to the alleged incapacity.

34. When any enquiry is instituted by a Civil Court under section 32 or section 33, such Court shall, for the purposes of making such enquiry, have the powers conferred and proceed in the manner prescribed, by Act XXXV of 1858 with respect to the enquiries directed to be made by the said Act.

The Civil Court shall transmit to the Court of Wards a copy of the order made on each such enquiry, and the Court of Wards shall thereupon, in case the proprietor has been found by the Civil Court to be incapable as aforesaid, make such order, consistent with this Act, as it shall think fit.

The Civil Court shall have, with reference to proprietors who have been adjudged to be incapable as aforesaid, the same powers as are conferred on a Civil Court by section 21 of Act XXXV of 1858, with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

## PART V.

### PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

35. Whenever the Court has determined to take the person or property of a disqualified proprietor under its charge, whether in accordance with an order of the Civil Court or otherwise, the Court shall make an order declaring the fact and directing that possession be taken of such person and property or of such property on behalf of the Court, and the Court shall be held to be in charge of such property from the time when possession shall have been so taken.

36. As soon as conveniently may be after an order is made under the provisions of section 35, the Collector of every district within which any part of the ward's property may be situated or some person authorized in writing by him in that behalf, shall take possession of all accounts, papers, and moveable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorized as aforesaid, may, in case he has reason to believe that any such account, paper, or property is in any room, box, or receptacle within any house in the actual possession of the ward, break open the same for the purpose of searching for such account, paper, or property.

37. Any such Collector may also order all persons in the employ of the ward or all persons who were in the employ of the deceased proprietor from whom the ward has derived his property to attend before him,

and may order any person to deliver up any accounts, papers, or moveable property belonging to the ward, or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession,

and may order all holders of tenures and under-tenures on such property to produce their titles to such tenures and under-tenures.

## PART VI.

## MANAGEMENT AND GUARDIANSHIP.

38. If no manager of the property of a ward is appointed by the Court, the Collector of the district in which the Collector when to be greater part of such property is situated, or any other deemed manager. Collector whom the Court may appoint in that behalf, shall be competent to do under the orders of the Court anything that might be lawfully done by the manager of such property.

39. Every manager appointed by the Court shall have power to manage all property which may be committed to his charge, to collect the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor ;

and may, under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.

40. Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall in every respect act to the best of his judgment for the ward's interest as if the property were his own.

Specific duties of manager. 41. Every manager appointed by the Court shall—

(a) have the care of so much of the property of the ward as the Court may direct ;

(b) give such security (if any) as the Court thinks fit to the Collector duly to account for all such property and for what he shall receive in respect of such property ;

(c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management ;

(d) pass his accounts at such periods and in such form as the Court may direct ;

(e) pay the balance due from him thereon ;

(f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court ;

(g) sign all papers, deeds, documents and writings which may be executed by him by virtue of his office ;

(h) be entitled to such allowance, to be paid out of the property, as the Court may think fit for his care and pains in the execution of his duties.

(i) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

General duty of guardian. 42. A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health, and, if he be a minor, to his education.

Specific duties of guardian. 43. Every guardian appointed by the Court shall—

(a) give such security (if any) as the Court thinks fit to the Collector for the due performance of his duty ;

(b) pass his accounts at such periods and in such form as the Court may direct ;

(c) pay the balance due from him thereon ;

(d) continue liable to account to the Court, after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship;

(e) apply for the sanction of the Court to any act [which may] involve expense not previously sanctioned by the Court;

(f) be entitled to such allowance, to be paid out of the property of the ward, as the Court may think fit for his care and pains in the execution of his duties.

44. No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to his guardian;  
No person to be guardian who can succeed to ward.

but nothing in this section shall apply to the mother of a ward, or to a testamentary guardian.

45. If the ward is a female, a female of the same religion shall, except in the case of a testamentary guardian, be appointed guardian, preference being given to female relatives if any such be eligible.  
Guardian of female ward.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

46. Every sum due to the Court from a manager or guardian, or from the sureties of a manager or guardian, or from any officer or servant employed under the court, or from the sureties of any such officer or servant, shall be recoverable as a demand under Bengal Act VII of 1868, or any similar law for the time being in force.  
Sums due recoverable as demands.

47. The Court may order any past or present manager or guardian or past or present officer subordinate to a manager or guardian, to deliver up his accounts of any property which may be in his possession within such time as may be fixed by the Court.  
Court may order guardian or manager to make over property.

48. \* All moneys received by the Manager shall be applied to the purposes hereinafter mentioned in accordance with such instructions as the Court may from time to time give in that behalf. Unless the Board of Revenue shall specially otherwise direct, priority shall be given to the purposes included under Class I over those included in Class II, and priority shall be given to the purposes included in Class II over those included in Class III.  
Application of moneys received by Manager.

#### CLASS I.

The payment of all charges necessary for the maintenance, education and religious observances of the ward and his family,

for the management and supervision of the property of the ward,

and the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property or any part of such property.

#### CLASS II.

The payment of all rents, cesses and other demands due to any superior landlords in respect of any land held on behalf of the ward,  
 the liquidation of debts payable by the ward,

\* Act III of 1881 (B. C.)

the payment of all expenses which may be necessary to protect the interests of the ward in the Civil Courts or otherwise,

the maintenance in an efficient condition of the estates, buildings and other immoveable property belonging to the ward, and

the payment such religious, charitable, and other allowances as were paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family as the Court may authorize to be paid.

### CLASS III.

The improvement of the land and property of the ward, and the benefit of the ward and his property generally.

*Repealed by Act IV of 1892.*

49. \*If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of 21 years,\* whose property is under the charge of the Court under clause (e) of section 6, or under the second clause of section 11, no part of the surplus mentioned in the proviso to the section immediately preceding shall be expended by the Court otherwise than in the liquidation of debts or in the improvement of the lands or property as aforesaid.

Any portion of such surplus remaining after provision has been made for such purposes, shall be paid to such ward.

Provided that before paying any portion of such surplus to such ward, the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain—

(1) as a working balance for the management of the property and expenses incidental thereto;

(2) in order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following years.

50. If the ward is not a female or male† as aforesaid, and if any surplus remains after providing so far as the Court may think fit for the objects mentioned in section 48† the same shall be applied in the purchase of other landed property or invested at interest on the security of—

promissory notes, debentures, stock, and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India;

stock or debentures of, or shares in, railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;

\* Act IV of 1892.

† Act III of 1881 (B. C.)

debentures or other securities for money paid by or on behalf of any municipal body under the authority of any Act of a legislature established in British India ;

or such other securities, stocks, or shares, guaranteed by the Government of India or the Government of Bengal as to the Court shall seem fit.

## PART VII.

### SUITS.

51. In every suit brought by or against any ward he shall be therein described as a Ward of Court ; and the manager of such ward's property, or if there is no manager, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward, and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any Civil Court in which such suit may be pending.

52. The Court of wards may by an order nominate or substitute any other person to be next friend or guardian for any such suit ; and upon receiving a copy of any such order of substitution, the Civil Court in which such suit is pending shall substitute the name of the next friend or guardian for the suit so appointed for the name of the manager or Collector.

53. If in any such suit any Civil Court shall decree any costs against the next friend or guardian for the suit of the ward, the Court of Wards shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands.

54. Every process which may be issued out of any Civil Court against any ward shall be served, through the Collector, upon the next friend or guardian for the suit as aforesaid of such ward.

55. No suit shall be brought on behalf of any ward by a Manager, \* unless the same be authorized by some order of the Court :

provided that a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but such suit shall not be afterwards proceeded with except under the sanction of the Court :

provided also that suits for arrears of rent may be brought on behalf of any ward if authorized by an order of the manager of the landed property on which such rents are due.

56. Nothing contained in this Part shall apply to any suit instituted or pending in the High Court, or to a proprietor who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 11.

\* Act III of 1881.

## PART VIII.

## PENALTIES.

57. Any person who refuses to comply with an order of a Collector under section 29, 30, 36, or 37, shall be liable, by order of the Collector, to a fine not exceeding five hundred rupees.

For disobeying certain orders of the Collector.

58. Any person who refuses to comply with an order made under section 47 may be punished, by order of the Court, with simple imprisonment and attachment of his property until the order is complied with.\* Provided that the Collector may release any person who has been so imprisoned on his furnishing sufficient security for his attendance and for the delivery of the accounts or property required within such time as the Collector shall think fit. The Collector may at any time rescind such order of release, and direct that effect shall be given to the previous order of imprisonment.

For disobeying orders under section 47.

58A.\* Any farmer holding or having held lands under the Court who, upon notice served upon him to that effect at any time during the currency of the lease or within six months after the expiry of the lease under which such lands were held or after he has relinquished such lands, omits or refuses to furnish accounts or produce documents or papers required under such notice, and shall not show sufficient cause for such omission or refusal, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission, and the Collector may impose such further daily fine as he may think proper, not exceeding twenty rupees for each day during which such farmer shall omit to furnish the accounts, documents or papers required after a date to be fixed by the Collector in a notice warning the farmer that such further daily fine will be imposed.

Penalty for neglecting to furnish accounts, &c.

Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male member of his family; or in case it cannot be so served, by posting some copy upon such conspicuous part of the usual or last known place of abode of such person, and in case such notice cannot be served in any of the ways hereinbefore mentioned it shall be served in such a way as the Collector issuing the notice may direct, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending.

Provided that whenever the amount levied under such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by the authority of the said Commissioner.

59. Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees, and if he is a manager or guardian appointed by the Court, to a fine not exceeding one thousand rupees.

For disobeying order of Court.

## PART IX.

### MISCELLANEOUS.

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in, his property or any part thereof, or assign over or charge any allowance to be received by him from the Court.\*

Disabilities of wards.

60A. No property which is or has been under the charge of the Court shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge.

61. No adoption by any ward, and no written or verbal permission to adopt given by any ward, shall be valid without the consent of the Lieutenant-Governor, obtained either previously or subsequently to such adoption, or to the giving of such permission, on application made to him through the Court.

Adoption by ward invalid without consent of Lieutenant-Governor.

62. Nothing contained in section 60 or in section 61 shall apply to a proprietor who has consented to leave his property under the charge of the Court, as provided in the second clause of section 11.

Exception as to persons who consent to remain wards.

63. †Any amount of interest which has accrued due on arrears of rent or other demand recoverable as rent payable to the Manager of an estate which is in charge of the Court may be recovered in any manner and by any process according to which such arrears may be recovered under any law for the time being in force, and any Court or officer who is competent to make an order or certificate in execution of which such arrears or other demands are recoverable, may direct that any costs incurred by the Manager in obtaining such order or certificate, and in executing the same shall be recovered in the same manner and by the same process as if the amount thereof had been included in the said order or certificate.

Recovery of interest on arrears of rent.

64. When any penalty is imposed by any order under section 57 or section 58, the Collector or Court passing such order shall make a formal record of the same with the reasons or grounds thereof.

Collector of Court to record reasons of penalties.

65. Whenever the Court has determined to release the property of a ward from its charge, it shall make an order that the jurisdiction of the Court over such property shall cease on a date not more than sixty and not less than fifteen days from the date of such order; and copies of such order shall be published as the Court may direct.

Procedure when Court's jurisdiction ceases.

\* Act IV of 1892.

† Act III of 1881 (B. C.)



**65A.\* Any expense incurred by the Court on account of any property**

Recovery of expense incurred on account of property in charge of Court.

under its charge may, after the release of such property, be recovered as a demand under Bengal Act VII of 1880, or any other act at the time being in force for the recovery of public demands from any person into whose possession such property or any part thereof may have passed immediately after the release by the Court of such property: Provided that the sum so recovered from any such person shall not be greater than the value of any such property which so passed into the possession of such person.

Powers of Collector in making enquiries.

**66. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.**

**67. An appeal shall lie from every order of a Collector under this Act to the Commissioner of the Division and from every order of a Commissioner under this Act to the Court.**

Appeals.

**68. All orders or proceedings of the Commissioner and of the Collector**

Control of Court.

**under this Act shall be subject to the supervision and control of the Court, and the Court may, if it thinks fit, revise, modify, or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.**

**69. In the exercise of the powers and in the discharge of the duties**

Control of Lieutenant-Governor.

**conferred and imposed respectively on the Court by this Act, the Court shall be guided by such orders and instructions as it may from time to time receive from the Lieutenant-Governor.**

Power of Court to make rules.

**70. The Court may make rules consistent with this Act.—**

(a) defining the powers of Commissioners and Collectors respectively when the property of a ward is situated in two or more districts or in two or more divisions ;

(b) prescribing what reports shall be made from time to time by Collectors and Commissioners on the condition of the ward and his property ;

(c) prescribing the periods at which and the mode in which accounts shall be submitted by managers and guardians respectively, and the mode in which such accounts shall be audited ;

(d) regulating the custody of securities and title deeds belonging to the state or property of a ward ;

(e) regulating the procedure in appeals from orders of Collectors and Commissioners respectively under this Act ;

(f) prescribing the procedure to be observed when a property ceases to be under the charge of the Court ;

(g) and generally for the better fulfilment of the purposes of this Act.

The Court may from time to time alter, add to, or repeal such rules.

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\* Act III of 1881 (B. C.)

# THE PROBATE AND ADMINISTRATION ACT, 1881.

## CONTENTS.

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### CHAPTER I.—PRELIMINARY.

- „ II.—OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.
  - „ III.—OF LIMITED GRANTS.
  - „ IV.—ALTERATION AND REVOCATION OF GRANTS.
  - „ V.—OF THE PRACTICE IN GRANTING AND REVOKING PROBATES  
AND LETTERS OF ADMINISTRATION.
  - „ VI.—OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.
  - „ VII.—OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.
  - „ VIII.—OF THE EXECUTOR'S ASSENT TO A LEGACY.
  - „ IX.—OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.
  - „ X.—OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.
  - „ XI.—OF THE PRODUCE AND INTEREST OF LEGACIES.
  - „ XII.—OF THE REFUNDING OF LEGACIES.
  - „ XIII.—OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR  
FOR DEVASTATION. .
  - „ XIV.—MISCELLANEOUS.
-



## ACT NO. V 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 21st January, 1881.)*

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Whereas it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows :—

### CHAPTER I.

#### PRELIMINARY.

Short title.

1. This Act may be called "The Probate and Administration Act, 1881":

Local extent.

It applies to the whole of British India;

Commencement.

and it shall come into force on the first day of April, 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the

Personal application.

case of every Hindu, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindu Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Province."

"Province" includes any division of British India, having a Court of the last resort:

"minor" means

any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority"

"minor":

"minority":

means the status of any such person:

"will"	means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :
"will :"	
"codicil"	means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :
"codicil :"	
"specific legacy :"	"specific legacy" means a legacy of specified property :
"demonstrative legacy :"	"demonstrative legacy" means a legacy directed to be paid out of specified property :
"probate"	means the copy a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :
"probate :"	
"Executor :"	"executor" means a person to whom the execution of the last will of a deceased person is, by the testators's appointment, confided :
"administrator :"	"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor : and
District judge :"	"District Judge" means the judge of a principal civil court of original jurisdiction.

## CHAPTER II.

### OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.

Appointment express or implied.

#### *Illustrations.*

(a). A wills that C be his executor if B will not. B is appointed executor by implication.

(b). A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c). A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :—" I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

Grant of probate to several executors simultaneously or at different times.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

#### *Illustration.*

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship ;

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate, applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

To whom administration may be granted.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

### CHAPTER III.

#### OF LIMITED GRANTS.

##### (a).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be

Probate of copy or draft of lost will.

granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of contents of lost or destroyed will.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

Administration until produced.

*(b).—Grants for the Use and Benefit of Others having Right.*

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent executor.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained the majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration during minority of several executors or residuary legatees.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case

Administration for use and benefit of lunatic.



of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator ;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

*(d.)—Grants with Exception.*

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed, shall be granted subject to such exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

*(e.)—Grants of the Rest.*

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

*(f.)—Grants of effects unadministered.*

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

## CHAPTER IV.

## ALTERATION AND REVOCATION OF GRANTS.

**48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.**

What errors may be rectified by Court.

Procedure where codicil discovered after grant of administration with will annexed.

Revocation or annulment for just cause.

"Just cause."

**49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.**

**50. The grant of probate or letters of administration may be revoked or annulled for just cause.**

*Explanation.*—"Just cause" is—

*1st*, that the proceedings to obtain the grant were defective in substance ;

*2nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

*3rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

*4th*, that the grant has become useless and inoperative through circumstances.

*5th*, \*that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect."

*Illustrations.*

(a). The Court by which the grant was made had no jurisdiction.

(b). The grant was made without citing parties who ought to have been cited.

(c). The will of which probate was obtained was forged or revoked.

(d). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f). Since probate was granted, a later will has been discovered.

(g). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

## CHAPTER V.

## OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

**51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.**

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing the Court may direct him to attend for the purpose of being examined respecting the same,

District Judge may order person to produce testamentary papers.

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immovable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Punjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect :—

“ I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the                      day of                      188                      the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of                      deceased, to E. F. of                      and G. H. of                      , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India” ;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

63. In cases wherein the will, copy or draft is written in any language

In what cases translation of will to be annexed to petition.

other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other

Verification of translation by person other than Court translator.

language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

"I (A. B.) do declare that I read and perfectly understand the language and character of the original and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid and stating.

the time and place of the deceased's death,  
the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or

Additional statements in petition for probate, &c.

letters of administration of an estate, intended to have effect throughout British India, shall state in

his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit, to examine the petitioner in person upon oath, and also to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect :—  
 “Let nothing be done in the matter of the estate of A, B., late of  
 , deceased, who died on the                      day of                      at                      without notice to  
 C. D. of                      .”

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

*Explanation.*—By “contention” is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate, in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following :—

“I,                      , Judge of the District of                      , [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)]

Form of such grant.

hereby make known\* that on the                      day of                      in the year                      the last will of                      , late of                      , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to                      , the executor in the said will named, \*he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such



further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of 18 ."

77. Whenever it appears to the District Judge or District Delegate Grant of letters of ad- that letters of administration to the estate of a per-  
ministration to be under son deceased, with or without a copy of the will  
seal of Court. annexed, should be granted, he shall grant the same  
under the seal of his Court in manner following :—

I, , Judge of the District of , [or Delegate appointed  
Form of such grant. for granting probate or letters of administration in  
(*here insert the limits of the Delegate's juris-*  
*diction*)] hereby make known that on the day of  
letters of administration (with or without the will annexed as the case  
may be) of the property and credits of , late of , deceased,  
were granted to, the father (or as the case may be) of the deceased,  
\*“he having undertaken to administer the same, and to make a full and  
true inventory of the said property and credits and exhibit the same in  
this Court within six months from the date of this grant or within such  
further time as the Court may from time to time appoint, and also to render  
to this Court a true account of the said property and credits within one  
year from the same date or within such further time as the Court may from  
time to time appoint.

The day of 18 ."

78. Every person to whom any grant of letters of administration is  
Administration-bond. committed, and, if the Judge so direct, any person  
to whom probate is granted, shall give a bond to the  
Judge of the District Court to enure for the benefit of the Judge for the  
time being, with one or more surety or sureties, engaging for the due collec-  
tion, getting in, and administering the estate of the deceased, which bond  
shall be in such form as the Judge from time to time by any general or  
special order directs.

79. The Court may, on application made by petition and on being satisfied  
Assignment of adminis- that the engagement of any such bond has not been  
tration-bond. kept, and upon such terms as to security, or providing  
that the money received be paid into Court, or other-  
wise as the Court may think fit, assign the same to some proper person, who  
shall thereupon be entitled to sue on the said bond in his own name as if  
the same had been originally given to him instead of to the Judge of the  
Court, and shall be entitled to recover thereon, as trustee for all persons  
interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration  
Time before which pro- of seven clear days, and no letters of administration  
bate or administration shall be granted until after the expiration of four-  
shall not be granted. teen clear days, from the day of the testator or in-  
testate's death.

81. Until a public registry for wills is established, every District  
Filling of original wills Judge and District Delegate shall file and preserve  
of which probate or ad- among the records of his Court all original wills of  
ministration with will an- which probate or letters of administration with the  
nexed granted. will annexed may be granted by him : and the  
Local Government shall make regulations for the preservation and inspec-  
tion of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

## CHAPTER VI.

### OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

*Illustration.*

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

\*"90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

"(2) The power of an executor to dispose of immoveable property so vested in him subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

"(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

"(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

"(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

"6. A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section."

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

*Illustrations.*

- (a). One of several executors has power to release a debt due to the deceased.
- (b). One has power to surrender a lease.
- (c). One has power to sell the property of the deceased, moveable or immoveable.
- (d). One has power to assent to a legacy.
- (e). One has power to endorse a promissory note payable to the deceased.
- (f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor,

Powers of administrator  
of effects unadministered.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator  
during minority.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate

Powers of married execu-  
trix or administratrix.

or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

## CHAPTER VII.

### OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral  
ceremonics.

98. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

Inventory and account.

"(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

"(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

"(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code."

99. In all cases where a grant has been made\* of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India :

and the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts owing to, and that were due to him at the time of his death.

As to property of, and  
debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid be-  
fore all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without sufficient indemnity to meet the liabilities whenever they may become due.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Abatement of general legacies.

and, in the absence

Executor not to pay one legatee in preference to another.

of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

108. Where there is a specific legacy and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable statement of specific legacies.

*Illustration.*

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

## CHAPTER VIII.

## OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

*Illustrations.*

(a). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

*Illustrations.*

(a). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

*Illustrations.*

(a). A bequeaths to B his lands of Sultanpur, which at the date of the will and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

**Assent** shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

**Implied assent.**

*Illustration.*

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

**Effect of executor's assent.** 116. The assent of the executor to a legacy gives effect to it from the death of the testator.

*Illustrations*

(a). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

**Executor when to deliver legacies.** 117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

## CHAPTER IX.

### OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

**118.** Where an annuity is given by the will, and no time is fixed for its commencement it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

**Commencement of annuity when no time fixed by will.**

**119.** Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

**When annuity, to be paid quarterly or monthly first falls due.**

**120.** Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

**Date of successive payments when first payment directed to be made within given time, or on day certain.**

**Apportionment where annuitant dies between times of payment.**

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

## CHAPTER X.

## OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

Intermediate interest. The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit ;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.



was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

## CHAPTER XI.

### OF THE PRODUCE AND INTEREST OF LEGACIES.

**Legatee's title to produce of specific legacy.** 128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

*Exception.*—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

#### *Illustrations.*

(a). A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeaths his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

**Residuary legatee's title to produce of residuary fund.** 129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

*Exception.*—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

#### *Illustrations.*

(a). The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

*Exceptions.*—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy.

Interest when time fixed. interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

*Exceptions.*—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

133. No interest

No interest on arrears of annuity within first year after testator's death.

payment of the annuity.

is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first

134. Where a sum

Interest on sum to be invested to produce annuity.

of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

## CHAPTER XII.

### OF THE REFUNDING OF LEGACIES.

135. An executor

Refund of legacy paid under Judge's orders.

who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. When an executor

No refund if paid voluntarily.

has voluntarily paid a legacy he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. When the time

Refund when legacy becomes due on performance of condition within further time allowed.

prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this

section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribed, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution ;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

\*Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

*Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest. 144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

\*145A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

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### CHAPTER XIII.

#### OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION

146. When an executor or Administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

*Illustrations.*

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

*Illustrations.*

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

## CHAPTER XIV.

### MISCELLANEOUS.

Provisions applied to administrator with will annexed. 148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties and privileges of the administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. *Repealed by Act VII of 1889.*

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. *Repealed by Act VII of 1889.*

Amendment of Hindu Wills Act. 154. The following amendments shall be made in the Hindu Wills Act, 1870 (namely):—

(a.) For the portion of section two commencing with the words “sections one hundred and seventy-nine” and ending with the words “administrator

with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b). The third clause of section three and last clause of section six shall be repealed.

(c). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will, or letters of administration to the estate, of any deceased Hindu, Mahammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, Amendment of Act XV No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

\*157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

"(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both."

\*19. Notwithstanding anything in section 90 of the Probate and Administration Act, 1881, a disposal of property by an executor or administrator who was appointed before the commencement of this Act, and to whom the provisions of that section were applicable, shall not be void by reason only that the consent of the Court to the disposal of the property was not obtained.

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\* Act VI of 1889.



And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

Enactment repealed. And when in any Act, regulation and notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the 'Code of Civil Procedure,' or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

References in previous Acts. Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted before the 1st day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act X of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Appeals pending on 29th July 1879. Saving of certain Acts affecting Central Provinces, Burma, Punjab and Oudh. 4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely) :—

The Central Provinces Courts Act, 1865 :

The Burma Courts Act, 1875 :

The Punjab Courts Act, 1877 :

The Oudh Civil Courts Act, 1879 :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landlords and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall for the purposes of this Code be deemed to be the District Court.

4A.\* (1.) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government

Power to modify the Code in its application to Revenue Courts.



with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare that any portions of those provisions shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2.) 'Revenue Court' in sub-section (1) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which its cognizance is not barred by any enactment for the time being in force.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

Saving of jurisdiction of  
Provincial Small Cause  
Courts.—

6. Nothing in this Code affects the jurisdiction or procedure—

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• (a.)†

(b.)†

(c) of Village Munsifs  
and Village Panchayats in  
Madras ;

(c) of Village Munsifs or Village Panchayats  
under the provisions of the Madras Code ;

(d) of Recorder of Ran-  
goon sitting as Insolvent  
Court.

(d) of the Recorder of Rangoon sitting as an  
Insolvent Court in Rangoon, Maulmain, Akyab or  
Bassein,

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. With respect to

(a) the jurisdiction exercised by certain jágírdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act XV of 1840 in the cases therein mentioned ; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specified provisions contained in the enactments mentioned or referred to in this section.

\* Repealed by Act VIII. of 1887.

† Act XIII of 1889.

# THE COURT FEES ACT, 1870.

ACT NO. VII OF 1870.

*(Received the assent of the Governor General on the 11th march 1870.)*

## CHAPTER I.

### PRELIMINARY.

Short title. 1. This Act may be called "The Court Fees Act, 1870".

Extent of Act. It extends to the whole of British India ;

Commencement of Act. And it shall come into force on the first day of April 1870.

2. On and after that day, the enactments mentioned in the first part of the third schedule hereto annexed shall be wholly repealed, and the enactments mentioned in the second part of the same schedule shall be repealed to the extent specified therein.

## CHAPTER II.

Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth of Victoria, Chapter one hundred and four, section fifteen,

or chargeable in each of such Courts under No. eleven of the first, and Nos. seven, twelve, fourteen,\* twenty and twenty-one of the second, schedule to this Act annexed ;

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns and their several Offices ;

shall be collected in manner hereinafter appearing.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ; •

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\* Act XII of 1891.

or in the exercise of its extraordinary original criminal jurisdiction ;

or in the exercise of its jurisdiction as regards appeals from the judg-

In their appellate juris- ment of two or more Judges of the said Court, or of  
diction. a Division Court ;

or in the exercise of jurisdiction as regards appeals from the Courts  
subject to its superintendence ;

As Courts of reference or in the exercise of its jurisdiction as a Court of  
and revision. reference or revision ;

unless in respect of such document there be paid a fee of an amount  
not less than that indicated by either of the said schedules as the proper fee  
for such document.

5. When any difference arises between the officer whose duty it is to

Procedure in case of diff- see that any fee is paid under this chapter and any  
erence as to necessity or suitor or attorney, as to the necessity of paying a fee  
amount of fee. or the amount thereof, the question shall, when the  
difference arises in any of the said High Courts, be referred to the taxing-  
officer, whose decision thereon shall be final, except when the question is, in  
his opinion, one of general importance, in which case he shall refer it to the  
final decision of the Chief Justice of such High Court or of such Judge of  
the High Court as the Chief Justice shall appoint either generally or special-  
ly in this behalf.

When any such difference arises in any of the said Courts of Small  
Causes, the question shall be referred to the Clerk of the Court, whose deci-  
sion thereon shall be final, except when the question is, in his opinion, one  
of general importance, in which case he shall refer it to the final decision of  
the First Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the  
meaning of the first paragraph of this section.

### CHAPTER III.

#### Fees in other Courts and in Public Offices :

6. Except in the Courts hereinbefore mentioned, no document of any

Fees on documents filed. of the kinds specified as chargeable in the first or  
&c. in mofussil Courts or in second schedule to this Act annexed shall be filed,  
public offices. exhibited or recorded in any Court of Justice, or  
shall be received or furnished by any public officer, unless in respect of such  
document there be paid a fee of an amount not less than that indicated by  
either of the said schedules as the proper fee for such document.

Computation of fees pay-  
able in certain suits.

7. The amount of fee payable under this Act in  
the suits next hereinafter mentioned shall be compu-  
ted as follows :—

I. In suits for money (including suits for damages or compensation, or

For money : arrears of maintenance, of annuities or of other  
sums payable periodically)—according to the amount claimed :

II. In suits for maintenance and annuities or other sums payable peri-

For maintenance and odically—according to the value of the subject-matter  
annuities : of the suit, and such value shall be deemed to be ten  
times the amount claimed to be payable for one year :

For other moveable property having a market-value :

III. In suits for moveable property other than money, where the subject-matter has a market-value according to such value at the date of presenting the plaint :

IV. In suits—

For moveable property of no market-value :  
case of documents relating to title,

(a) for moveable property where the subject-matter has no market-value, as for instance, in the

To enforce a right to share in joint-family property :

(b) to enforce the right to share in any property on the ground that it is joint-family property,

For declaratory decree and consequential relief

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

For an injunction.

(d) to obtain an injunction,

For easements.

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

For accounts :

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought,\*

For possession of land, houses and gardens :

V. In suits for the possession of land, houses and gardens—according to the value of the subject-matter ; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable :

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate, and is recorded as aforesaid ;

and such revenue is settled, but not permanently—

five times the revenue so payable :

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits :

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood :

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market-value of the land :

Proviso as to Bombay Presidency.

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be—

(1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey-assessment ;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to ten times the survey-assessment ; and

(3) where the whole or any part of the annual survey assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted :

*Explanation*—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a *farmar* or *ryot* shall have executed a separate engagement to Government, or, in the absence of such engagement, shall have been separately assessed with revenue.

(e) Where the subject-matter is a house or garden—according to the For houses and gardens : market-value of the house or garden :

VI. In suits to enforce a right of pre-emption according to the value To enforce a right of (computed in accordance with paragraph V. of this pre-emption . section) of the land, house or garden in respect of which the right is claimed :

VII. In suits for the interest of an assignee of land revenue—fifteen For interest of assignee times his nett profits as such for the year next before of land-revenue : the date of presenting the plaint :

VIII. In suits to set aside an attachment of land or of an interest in To set aside an attach- land or revenue—according to the amount for which ment : the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

To redeem : IX. In suits against a mortgage for the recovery of the property mortgaged,

To foreclose : and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute :

According to the principal money expressed to be secured by the instrument of mortgage :

For specific performance. X. In suits for specific performance :—

(a) of a contract of sale—according to the amount of the consideration :

(b) of a contract of mortgage according to the amount agreed to be secured :

(c) of a contract of lease according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term.

(d) of an award—according to the amount or value of the property in dispute :

Between landlord and  
tenant.

XI. In the following suits between landlord and  
tenant :—

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent :—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of

Fee on memorandum of appeal against an order relating to compensation, appeal against order relating to compensation, under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual nett profits or the

Power to ascertain nett profits or market-value. market-value of any such land, house or garden as is mentioned in section seven, paragraphs five and six, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. I. If in the result of any such investigation the Court finds that

Procedure where nett profits or market-value wrongly estimated. the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee; but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

II. In such case the suit shall be stayed until the additional fees are paid, If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed:

III.\* *Repealed by Act XII of 1891.*

11. In suits for mesne profits or for immoveable property and mesne

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed. profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is

paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. I. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit :

II. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section ten, paragraph 2, shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section three hundred and fifty-one of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the different parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Where an application for a review of judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the second schedule to this Act, number one, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and on the hearing of such appeal, the

Additional fee where respondent takes objection to unappealed part of decree.

respondent takes, under section three hundred and forty-eight of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section nine.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of any offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents. 19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

I. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.

II.\* *Repealed by Act XII of 1891.*

III. Written statements called for by the Court after the first hearing of a suit.

IV. † *Repealed by Act XIII of 1889.*

V. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

VI. Plaints and processes in suits before District Punchayats in same Presidency.

VII. Plaints in suits before Collectors under Madras Regulation XII of 1816.

VIII. Probate of a will, letters of administration,‡ and, save as regards debts and securities, is a certificate under Bombay Regulation VIII of 1827, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

IX. Application or petition to a Collector or other Officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land, or the ascertainment of rights thereto or interests therein, if presented previous to the final conformation of such settlement.

X. Application relating to a supply for irrigation of water belonging to Government.

\* Act XII of 1891.

† Act XIII of 1889.

‡ Act VIII of 1889.



**XI.** Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

**XII.** Application for service of notice of relinquishment of land or of enhancement of rent.

**XIII.** Written authority to an agent to distress.

**XIV.** First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

**XV.** Bail-bonds in Criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

**XVI.** Petition, application, charge, or information respecting any office, when presented, made or laid to or before a Police Officer, or to or before the heads of villages or the village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

**XVII.** Petition by a prisoner or other person in duress or under restraint of any Court or its officers.

**XVIII.** Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of Railway Company.

**XIX.** Application for permission to cut timber in Government forests, or otherwise relating to such forests.

**XX.** Application for the payment of money due by Government to the applicant.

**XXI.** Petition of appeal against the chaukidari assessment under Act No. XX of 1856, or against any municipal tax.

**XXII.** Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

**XXIII.** Petitions presented to the Special Commissioner appointed under Bengal Act No. II. of 1869 (to ascertain, regulate, and record certain tenures in Chota Nagpore).

**XXIV.** Petitions under the fourteenth and fifteenth of Victoria, Chapter forty (An Act for marriages as India), section five, or under Act No. V. 1852, section nine.

### CHAPTER III A.

“Probates, Letters” of Administration and Certificates of Administration.

**19. A.** Where any person on applying for the probate of a will or Relief where too high a letters of administration has estimated the property Court-fee has been paid of the deceased to be of greater value, than the same has afterwards proceed to be, and has consequently paid too high a Court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled ;

(b) substitute another stamp for denoting the Court-fee which should have been paid thereon ; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

19 B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less Court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act.

Such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time or making the claim as may appear to be reasonable under the circumstances.

19 C. Whenever\* a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate ;

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19 D. The probate of the will, or the letters of administration of the effects, of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or where the deceased was possessed, and whether wholly or partially as a trustee notwithstanding that the value of such property is not included in the amount of the Court-fee in respect of which a Court-fee was due on the probate or letters of administration.

**19 E.** Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the Province in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

**19 F.** In case of letters of administration on which too low a Court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the Administrator to give proper security before letters stamped under section 19 E. the Administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

**19 G.** Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator—acting under such probate or letters does not, within six months\* after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees percent. On the amount of the sum wanting to make up the proper Court-fee.

**19 H** †(1). Any penalty or forfeiture under section 19 G or section 19 H of the Court-fees Act, 1870, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

\* Act XII of 1891.

† Act VI of 1889.

(2). The Chief-Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under section 19 E of the said Act.

*\* Repealed by Act VIII of 1890.*

#### CHAPTER IV.

#### PROCESS FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters—

I. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction :

II. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which Police officers may arrest without a warrant ; and

III. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and Subordinate Courts.

22. Subject to rules to be made by the High Court and approved by the Local Government and the Governor General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865, (to consolidate

and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

23. Subject to rules to be framed by the Chief Controlling Revenue Number of peons in Revenue Courts. Authority and approved by the Local Government and the Governor General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. \* *Repealed by Act XII of 1891.*

## CHAPTER V.

### OF THE MODE OF LEVYING FEES.

25. All fees referred to in section three or chargeable under this Act shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed, or adhesive as the Governor General of India in Council may, by notification in the Gazette of India, from time to time direct.

Rules for supply, number, renewal and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section three in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local Official Gazette, and shall thereupon have the force of law.

28. No document which ought to bear stamp under this Act shall be of any validity, unless and until it is properly stamped.

But if any such document is through mistake or inadvertence received, filed or used in any Court or before any officer not properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, and Judge in a Court, may, if he thinks fit, order that such document be stamped as he may direct ; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake and to make it confirm to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended document.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

## CHAPTER VI.

### MISCELLANEOUS.

31. I. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which Police Officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused persons, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

Repayment of fees paid on applications to Criminal Courts.

II. In the case mentioned in section eighteen, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any paid by the latter for the examination.

III. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

IV. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. *Repealed by Act XII of 1891.*

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section four or section six shall be deemed to prohibit such filing or exhibition.

Admission in Criminal cases of documents for which proper has not been paid.

\* 34. I. The Local Government may from time to time make rules for Sale of Stamps. • regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

II. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

III. Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

35. The Governor General of India in Council may, from time to time, by notification in the Gazette of India, reduce or remit fees, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed, and may in like manner cancel or vary such order.

36. Nothing in Chapters II and V of this Act applies to the Commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

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## SCHEDULE I.

*Ad valorem Fees.*

NUMBER.		PROPER FEE.
1. <i>Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three.</i>	When the amount or value of the subject matter in dispute does not exceed five rupees ... ..	Six annas.
	When such amount or value exceeds five rupees,—for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees ... ..	Six annas.
	When such amount or value exceeds one hundred rupees,—for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees ... ..	Twelve annas.
	When such amount or value exceeds one thousand rupees,—for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees ... ..	Five rupees.
	When such amount or value exceeds five thousand rupees,—for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ... ..	Ten rupees.
	When such amount or value exceeds ten thousand rupees,—for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees ... ..	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees,—for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees ... ..	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees,—for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees ... ..	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees,—for every five thousand rupees, or part thereof, in excess of fifty thousand rupees ... ..	Twenty-five rupees.
	Provided that the maximum fee leviable on a <i>plaint or memorandum of appeal</i> shall be three thousand rupees.	



## SCHEDULE I.—(Continued).

*Ad valorem Fees*

NUMBER.		PROPER FEE.
2. <i>Plaint*</i> in a suit for possession under † the Specific Relief Act, 1877, section IX.	...	A fee of one half the amount prescribed in the foregoing scale.
3. <i>Petition</i> under the Indian Registration Act, section fifty-three.	...	
4. <i>Application</i> for review of Judgment, if presented on or after the ninetieth day from date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.
5. <i>Application</i> for review of Judgment if presented before the ninetieth day from the date of the decree.	...	
6. <i>Copy or translation of a Judgment or order not being, or having the force of a decree.</i>	When such Judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—	
	(a)—If the amount or value of the subject-matter is fifty or less than fifty rupees ...	Four annas.
	(b)—If such amount or value exceeds fifty rupees ...	Eight annas.
	When such Judgment or order is passed by a High Court ...	One rupee.
7. <i>Copy of a decree or order having the force of a decree.</i>	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees ...	Eight annas.
	(b)—If such amount or value exceeds fifty rupees ...	One rupee.
	When such decree or order is made by a High Court ...	Four rupees.
8. <i>Copy of any document liable to stamp duty under the General Stamp Act, 1869, when left by any party to a suit or proceeding in place of the original withdrawn.</i>	(a)—When the Stamp-duty chargeable on the original does not exceed eight annas ...	The amount of the duty chargeable on the original.
	(b)—In any other case ...	Eight annas.

\* Act XX of 1870.

† Act XII of 1891.

## SCHEDULE I.—(Continued.)

*Ad valorem Fees.*

NUMBER.		PROPER FEE.
<p>9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.</p> <p>10. * <i>Repealed by Act VIII of 1890.</i></p>	<p>For every three hundred and sixty words, or fraction of three hundred and sixty words      ...      ...      ...</p>	<p>Eight annas.</p>
<p>11. Probate of a will or letters of administration with or without will annexed.</p> <p>12. Certificate under the Succession Certificate Act, 1889.</p>	<p>If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.</p> <p>In any case ...</p>	<p>Two per centum on such amount or value: provided that when, after the grant of a Certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p> <p>Two per centum on the amount or value of any debt or security specified in the Certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the Certificate is extended under section 10 of the Act.</p> <p><i>Note.</i>—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the Certificate is applied for, so far as such amount can be ascertained.</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividend on, or for the negotiation or transfer of, the security, or for both purposes, the value</p>

## SCHEDULE I.—(Continued.)

*Ad valorem Fees.*

Number.		PROPER FEE.
<p>12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.</p>	<p>.....</p>	<p>of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p> <p>(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and</p> <p>(2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees.</p>
<p>13. Application to the Chief Court or the Court of the Financial Commissioner of the Panjab for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure.</p>	<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.</p>	<p>Two rupees.</p>
	<p>When such amount or value exceeds twenty-five rupees.</p>	<p>The fee leviable on a memorandum of appeal.</p>

\* Act VII of 1889.

† Act XVIII of 1884.

*Table of Rates of ad valorem Fees leviable on the institution of Suits.*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee		
Rs.	Rs.	Rs.	A.	P.
...	5	0	6	0
5	10	0	12	0
10	15	1	2	0
15	20	1	8	0
20	25	1	14	0
25	30	2	4	0
30	35	2	10	0
35	40	3	0	0
40	45	3	6	0
45	50	3	12	0
50	55	4	2	0
55	60	4	8	0
60	65	4	14	0
65	70	5	4	0
70	75	5	10	0
75	80	6	0	0
80	85	6	6	0
85	90	6	12	0
90	95	7	2	0
95	100	7	8	0
100	110	8	4	0
110	120	9	0	0
120	130	9	12	0
130	140	10	8	0
140	150	11	4	0
150	160	12	0	0
160	170	12	12	0
170	180	13	8	0
180	190	14	4	0
190	200	15	0	0
200	210	15	12	0
210	220	16	8	0
220	230	17	4	0
230	240	18	0	0
240	250	18	12	0
250	260	19	8	0
260	270	20	4	0
270	280	21	0	0
280	290	21	12	0
290	300	22	8	0
300	310	23	4	0
310	320	24	0	0
320	330	24	12	0
330	340	25	8	0
340	350	26	4	0
350	360	27	0	0
360	370	27	12	0
370	380	28	8	0

*Table of Rates of ad valorem Fees, &c.—(Continued).*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
380	390	29	4	0
390	400	30	0	0
400	410	30	12	0
410	420	31	8	0
420	430	32	4	0
430	440	33	0	0
440	450	33	12	0
450	460	34	8	0
460	470	35	4	0
470	480	36	0	0
480	490	36	12	0
490	500	37	8	0
500	510	38	4	0
510	520	39	0	0
520	530	39	12	0
530	540	40	8	0
540	550	41	4	0
550	560	42	0	0
560	570	42	12	0
570	580	43	8	0
580	590	44	4	0
590	600	45	0	0
600	610	45	12	0
610	620	46	8	0
620	630	47	4	0
630	640	48	0	0
640	650	48	12	0
650	660	49	8	0
660	670	50	4	0
670	680	51	0	0
680	690	51	12	0
690	700	52	8	0
700	710	53	4	0
710	720	54	0	0
720	730	54	12	0
730	740	55	8	0
740	750	56	4	0
750	760	57	0	0
760	770	57	12	0
770	780	58	8	0
780	790	59	4	0
790	800	60	0	0
800	810	60	12	0
810	820	61	8	0
820	830	62	4	0
830	840	63	0	0
840	850	63	12	0
850	860	64	8	0

*Table of Rates of ad valorem Fees, &c.—(Continued).*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
860	870	65	4	0
870	880	66	0	0
880	890	66	12	0
890	900	67	8	0
900	910	68	4	0
910	920	69	0	0
920	930	69	12	0
930	940	70	8	0
940	950	71	4	0
950	960	72	0	0
960	970	72	12	0
970	980	73	8	0
980	990	74	4	0
990	1,000	75	0	0
1,000	1,100	80	0	0
1,100	1,200	85	0	0
1,200	1,300	90	0	0
1,300	1,400	95	0	0
1,400	1,500	100	0	0
1,500	1,600	105	0	0
1,600	1,700	110	0	0
1,700	1,800	115	0	0
1,800	1,900	120	0	0
1,900	2,000	125	0	0
2,000	2,100	130	0	0
2,100	2,200	135	0	0
2,200	2,300	140	0	0
2,300	2,400	145	0	0
2,400	2,500	150	0	0
2,500	2,600	155	0	0
2,600	2,700	160	0	0
2,700	2,800	165	0	0
2,800	2,900	170	0	0
2,900	3,000	175	0	0
3,000	3,100	180	0	0
3,100	3,200	185	0	0
3,200	3,300	190	0	0
3,300	3,400	195	0	0
3,400	3,500	200	0	0
3,500	3,600	205	0	0
3,600	3,700	210	0	0
3,700	3,800	215	0	0
3,800	3,900	220	0	0
3,900	4,000	225	0	0
4,000	4,100	230	0	0
4,100	4,200	235	0	0
4,200	4,300	240	0	0
4,300	4,400	245	0	0

*Table of Rates of ad valorem Fees, &c.—(Continued.)*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
4,400	4,500	250	0	0
4,500	4,600	255	0	0
4,600	4,700	260	0	0
4,700	4,800	265	0	0
4,800	4,900	270	0	0
4,900	5,000	275	0	0
5,000	5,250	285	0	0
5,250	5,500	295	0	0
5,500	5,750	305	0	0
5,750	6,000	315	0	0
6,000	6,250	325	0	0
6,250	6,500	335	0	0
6,500	6,750	345	0	0
6,750	7,000	355	0	0
7,000	7,250	365	0	0
7,250	7,500	375	0	0
7,500	7,750	385	0	0
7,750	8,000	395	0	0
8,000	8,250	405	0	0
8,250	8,500	415	0	0
8,500	8,750	425	0	0
8,750	9,000	435	0	0
9,000	9,250	445	0	0
9,250	9,500	455	0	0
9,500	9,750	465	0	0
9,750	10,000	475	0	0
10,000	10,500	490	0	0
10,500	11,000	505	0	0
11,000	11,500	520	0	0
11,500	12,000	535	0	0
12,000	12,500	550	0	0
12,500	13,000	565	0	0
13,000	13,500	580	0	0
13,500	14,000	595	0	0
14,000	14,500	610	0	0
14,500	15,000	625	0	0
15,000	15,500	640	0	0
15,500	16,000	655	0	0
16,000	16,500	670	0	0
16,500	17,000	685	0	0
17,000	17,500	700	0	0
17,500	18,000	715	0	0
18,000	18,500	730	0	0
18,500	19,000	745	0	0
19,000	19,500	760	0	0
19,500	20,000	775	0	0
20,000	21,000	795	0	0
21,000	22,000	815	0	0

*Table of Rates of ad valorem Fees, &c.—(Continued.)*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
22,000	23,000	835	0	0
23,000	24,000	855	0	0
24,000	25,000	875	0	0
25,000	26,000	895	0	0
26,000	27,000	915	0	0
27,000	28,000	935	0	0
28,000	29,000	955	0	0
29,000	30,000	975	0	0
30,000	32,000	995	0	0
32,000	34,000	1,015	0	0
34,000	36,000	1,035	0	0
36,000	38,000	1,055	0	0
38,000	40,000	1,075	0	0
40,000	42,000	1,095	0	0
42,000	44,000	1,115	0	0
44,000	46,000	1,135	0	0
46,000	48,000	1,155	0	0
48,000	50,000	1,175	0	0
50,000	55,000	1,200	0	0
55,000	60,000	1,225	0	0
60,000	65,000	1,250	0	0
65,000	70,000	1,275	0	0
70,000	75,000	1,300	0	0
75,000	80,000	1,325	0	0
80,000	85,000	1,350	0	0
85,000	90,000	1,375	0	0
90,000	95,000	1,400	0	0
95,000	1,00,000	1,425	0	0
1,00,000	1,05,000	1,450	0	0
1,05,000	1,10,000	1,475	0	0
1,10,000	1,15,000	1,500	0	0
1,15,000	1,20,000	1,525	0	0
1,20,000	1,25,000	1,550	0	0
1,25,000	1,30,000	1,575	0	0
1,30,000	1,35,000	1,600	0	0
1,35,000	1,40,000	1,625	0	0
1,40,000	1,45,000	1,650	0	0
1,45,000	1,50,000	1,675	0	0
1,50,000	1,55,000	1,700	0	0
1,55,000	1,60,000	1,725	0	0
1,60,000	1,65,000	1,750	0	0
1,65,000	1,70,000	1,775	0	0
1,70,000	1,75,000	1,800	0	0
1,75,000	1,80,000	1,825	0	0
1,80,000	1,85,000	1,850	0	0
1,85,000	1,90,000	1,875	0	0
1,90,000	1,95,000	1,900	0	0
1,95,000	2,00,000	1,925	0	0



*Table of Rates of ad valorem Fees, &c.—(Concluded)*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
2,00,000	2,05,000	1,950	0	0
2,05,000	2,10,000	1,975	0	0
2,10,000	2,15,000	2,000	0	0
2,15,000	2,20,000	2,025	0	0
2,20,000	2,25,000	2,050	0	0
2,25,000	2,30,000	2,075	0	0
2,30,000	2,35,000	2,100	0	0
2,35,000	2,40,000	2,125	0	0
2,40,000	2,45,000	2,150	0	0
2,45,000	2,50,000	2,175	0	0
2,50,000	2,55,000	2,200	0	0
2,55,000	2,60,000	2,225	0	0
2,60,000	2,65,000	2,250	0	0
2,65,000	2,70,000	2,275	0	0
2,70,000	2,75,000	2,300	0	0
2,75,000	2,80,000	2,325	0	0
2,80,000	2,85,000	2,350	0	0
2,85,000	2,90,000	2,375	0	0
2,90,000	2,95,000	2,400	0	0
2,95,000	3,00,000	2,425	0	0
3,00,000	3,05,000	2,450	0	0
3,05,000	3,10,000	2,475	0	0
3,10,000	3,15,000	2,500	0	0
3,15,000	3,20,000	2,525	0	0
3,20,000	3,25,000	2,550	0	0
3,25,000	3,30,000	2,575	0	0
3,30,000	3,35,000	2,600	0	0
3,35,000	3,40,000	2,625	0	0
3,40,000	3,45,000	2,650	0	0
3,45,000	3,50,000	2,675	0	0
3,50,000	3,55,000	2,700	0	0
3,55,000	3,60,000	2,725	0	0
3,60,000	3,65,000	2,750	0	0
3,65,000	3,70,000	2,775	0	0
3,70,000	3,75,000	2,800	0	0
3,75,000	3,80,000	2,825	0	0
3,80,000	3,85,000	2,850	0	0
3,85,000	3,90,000	2,875	0	0
3,90,000	3,95,000	2,900	0	0
3,95,000	4,00,000	2,925	0	0
4,00,000	4,05,000	2,950	0	0
4,05,000	4,10,000	2,975	0	0
4,10,000	.....	3,000	0	0

## SCHEDULE II.

*Fixed Fees.*

NUMBER.	PROPER FEE.
1. Application or petition ...	<p>(a.)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;  or when presented to any officer of Land Revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively such engagement ;  or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;  or when presented to any Civil Court other than a principal Civil Court of original jurisdiction,* or to any Court of Small Causes constituted under Act No. XI of 1856, or under Act No. XVI of 1868, section twenty, or to a Collector or other Officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;  or when presented to any Civil, Criminal or Revenue Court, or to any Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or Officer, or of any other document on record in such Court or Office. †</p> <p>(b.)—When containing a complaint or charge of any offence other than an offence for which Police Officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court ;  or when presented to a Civil, Criminal or Revenue Court, or to a Collector or any revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;</p>

One anna.

Eight annas.

\* Act XIII of 1869.

## SCHEDULE II.—(Continued.)

*Fixed Fees.*

NUMBER.		PROPER FEE.
1. Application or petition.— <i>Continued</i> ...	<p>or to deposit in Court revenue or rent ; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant ...</p> <p>(c.)—When presented to a Chief Commissioner or other Chief Controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any Chief Officer charged with the executive administration of a Division and not otherwise provided for by this Act ...</p> <p>(d.)—When presented to a High Court</p>	<p>Eight annas.</p> <p>One rupee.</p> <p>Two rupees.</p>
2. Application for leave to sue as a pauper.	... ..	Eight annas.
3. Application for leave to appeal as a pauper ...	<p>(a.)—When presented to a District Court ...</p> <p>(b.)—When presented to a Commissioner or a High Court ...</p>	<p>One rupee.</p> <p>Two rupees.</p>
4. <i>Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or *the Mamlatdars' Courts Act, 1876</i>		
5. <i>Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy</i> ...		
6.† <i>Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1882, or the Code of Civil Procedure</i> ...	... ..	Eight annas.
7. <i>Undertaking under section forty-nine of the Indian Divorce Act</i> ...		

\* Act XII of 1891.

† Act VI of 1889.

## SCHEDULE II—(Continued.)

*Fixed Fees.*

NUMBER.		PROPER FEE.
*8. <i>Repealed by Act XII of 1891.</i>		
*9. <i>Ditto.</i>		
10. Mukhtarnama or Wakalutnama ...	When presented for the conduct of any one case— (a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number ... ..	Eight annas.
	(b)—to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority ... ..	One rupee.
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling revenue or executive authority	Two rupees.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented.	(a) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling revenue or executive authority ... ..	Eight annas.
	(b) to a High Court or Chief Commissioner, or other Chief Controlling executive or revenue authority ... ..	Two rupees.
12. Caveat ...		
13. Application under Act No. X of 1859, section twenty-six, or Bengal Act No. VI of 1862, section nine or Bengal Act No. VIII of 1869, section thirty-seven ...	... ..	
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 ...	... ..	Five rupees.

## SCHEDULE II.—(Continued.)

*Fixed Fees.*

NUMBER.				PROPER FEE.
15. Complaint or memorandum of appeal in a suit to obtain possession of a wife ...	}	...	...	Five rupees.
16.* <i>Repealed by Act VI of 1889.</i>				
17. Complaint or memorandum of appeal in each of the following suits—	}	...	...	Ten rupees.
I. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court :				
II. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :				
III. to obtain a declaratory decree where no consequential relief is prayed :				
IV. to set aside an award :				
V. to set aside an adoption :				
VI. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.				
18. Application under section three hundred and twenty-six of the Code of Civil Procedure :	}	...	...	
19. Agreement under section three hundred and twenty-eight of the same Code.				

\* Act VI of 1889.

SCHEDULE II.—(*Continued.*)*Fixed Fees.*

NUMBER.		PROPER FEE.
20. Every petition under the Indian Divorce Act, except petitions under section forty-four of the same Act, and every memorandum of appeal under section fifty-five of the same Act ...	... ..	Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865 ...		

## SCHEDULE III.

## ENACTMENTS REPEALED.

## PART I.

*Acts wholly repealed.*

Number and year.	Title.
Act No. XVII of 1848	An Act for substituting Stamp Duties instead of Institution Fees in the Courts of the District Moonsiffs in the Presidency of Madras; and for refunding Stamp Duties on Plaints in certain cases.
Act No. X of 1862 ...	An Act to consolidate and amend the law relating to Stamp Duties.
Act No. XI of 1863...	An Act to consolidate and amend the law relating to the employment and remuneration of Peons for the service and execution of Civil Process.
Act No. XVIII of 1865	An Act to amend Act No. X of 1862 (to consolidate and amend the law relating to Stamp Duties.)
Act No. XV. of 1868	The High Court Fees Act, 1868.
Bengal Act No. V of 1863.	An Act to amend the law relating to the employment and remuneration of Peons for the service and execution of the process of the Civil and Revenue Courts.

## SCHEDULE III—(Continued.)

## ENACTMENTS REPEALED.

## PART II.

*Acts and Regulations partly repealed.*

Number and year.	Title.	Extent of Repeal.
Act No. V of 1852.	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "an Act for Marriages in India."	In section nine, the words 'which may in all cases be on unstamped paper.'  Section twenty-five.
Act No. XXXIII of 1852.	An Act to facilitate the enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.	Section nine.
Act No. VIII of 1859.	An Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	Section ninety-eight, from and including the words 'on the application', to the end of the section. In section one hundred and eighteen, the words 'on unstamped paper.' In section one hundred and nineteen, the words 'and be written upon stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions'. Section one hundred and twenty-two, from and including the words 'when such statements', to the end of the section. In section one hundred and sixty-four, the words, 'on unstamped paper'. In section two hundred and ninety-nine, the words 'on a stamp paper of the value of eight annas'. In section three hundred and twenty six, the words 'on a stamp paper of one-fourth of the value prescribed for plaints in suits'. In section three hundred and twenty seven, the words 'shall be written on the stamp paper required for petition to the Court where a stamp is required for petitions by any law for the time being in force, and'

SCHEDULE III.—(*Continued.*)

## ENACTMENTS REPEALED.

PART II—(*Continued.*)*Acts and Regulations partly repealed.*

Number and year.	Title.	Extent of repeal.
Act No. VIII of 1859.	An Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	<p>In section three hundred and twenty-eight, the words 'which shall be subject to the same stamp Duty as prescribed for plaints in suit.'</p> <p>In section three hundred and sixty-eight, the words 'on a stamp paper of the value of one rupee if the appeal lie to the District Court, and on a stamp paper of the value of two rupees if the appeal lie to the Sudder Court.'</p> <p>Section three hundred and seventy-seven, from and including the words 'if the application,' to the end of the section.</p>
Act No. X of 1859.	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William.	<p>In sections thirteen and one-hundred and twenty the words '(which may be on plain paper).'</p> <p>In section nineteen, the words 'on plain paper.'</p> <p>So much of sections one hundred and fifty-six and one hundred and sixty-one as relates to the stamp to be borne by a petition of appeal.</p>
Act No. XXIII of 1861.	An Act to amend Act VIII of 1859 (for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.)	The last clause of section twelve.
Act No. XX of 1862.	An Act to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain sections of Act VIII of 1859 in the said High Court.	<p>The preamble down to and including the words 'appointed to the said High Court ; and'</p> <p>Section two.</p>



## SCHEDULE III.—(Continued.)

## ENACTMENTS REPEALED.

## PART II.—(Continued,)

*Acts and Regulations partly repealed.*

Number and year.	Title.	Extent of Repeal.
Act No. I of 1863.	An Act to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory.	In section seventeen, the last sentence. In section twenty, the words 'shall be written on stamp paper of the value of one rupee, if the appeal lie to the Court of the Deputy Commissioner, and on stamp paper of the value of two rupees if the appeal lie to the Court of the Commissioner or to the Court of the Chief Commissioner, and'
Act No. XX of 1863.	An Act to enable the Government to divest itself of the management of Religious Endowments.	Section twenty-six.  In section eighteen, the words 'the application may be made upon unstamped paper' and 'in calculating the costs at the termination of the suit, the stamp duty on the preliminary application shall be estimated and shall be added to the costs of the suit.'
Act No. XXI of 1863.	An Act to constitute Recorders' Court for the Towns of Akyab, Rangoon, and Moulmein, in British Burmah; and to establish Courts of Small Causes in the said Towns.	Section forty-six
Act No. XXXII of 1863.	An Act to continue in force Act XX of 1862 (to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain sections of Act VIII of 1859 in the said High Court).	So far as it relates to fees and stamp Duties.

SCHEDULE III.—(*Continued.*)

## ENACTMENTS REPEALED.

PART II.—(*Continued.*)*Acts and Regulations partly repealed.*

Number and year.	Title.	Extent of Repeal.
Act No. X of 1865.	The Indian Succession Act, 1865.	Section three hundred and twenty-nine and the schedule.
Act No. XI of 1865.	An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil Jurisdiction of the High Courts of Judicature.	In section forty-seven, the words 'the twenty-sixth section of Act X of 1862 (to consolidate and amend the law relating to Stamp Duties), and,
Act No. XV of 1865.	The Parsi Marriage and Divorce Act, 1865.	Section thirty-nine.
Act No. XX of 1866.	The Indian Registration Act, 1866.	In section fifty-three the words 'shall, where a stamp is required by law, bear a stamp of one-fourth the value prescribed for a plaint in such a suit, and' In section eighty-four, the words 'shall, where a stamp is required by law, bear a stamp of eight annas, and,'
Act No. XXI of 1866.	The Native Converts' Marriage Dissolution Act, 1866.	In section seven the words 'shall bear a stamp of two rupees, and,'
Act No. XXVI of 1867.	An Act to amend the law relating to stamp duties.	The whole Act, except the words 'no Advocate of any High Court shall be required to file or present a Mukhtarnama or Wakalutnama or any other document empowering him to act.'
Act No. XIX of 1868.	The Oudh Rent Act, 1868.	In section fifteen, the words 'the application shall bear a stamp of eight annas' In section twenty-five, the words 'on a paper bearing a stamp of eight annas' In section thirty, the words 'on a paper bearing a stamp of eight annas'

THE COURT FEES ACT.  
SCHEDULE III—(*Continued.*)

[Act VII.]

ENACTMENTS REPEALED.

PART II.—(*Continued.*)

*Acts and Regulations partly repealed.*

Number and year.	Title.	Extent of Repeal.
Act No. XXVIII of 1868.	The Panjab Tenancy Act, 1868.	In section seventeen and forty, the words 'on a paper bearing a stamp of eight annas' Section forty-three.
Act No. IV of 1869.	The Indian Divorce Act	In section forty-seven, the words 'or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and' And the words 'in the first, second and third cases mentioned in this section,' In section forty-nine, the words 'shall bear a stamp of eight annas,'
Act No. IX of 1869.	The Indian Income Tax Act.	In section nineteen, the words 'it shall bear a stamp of eight-annas,' In section twenty-one, the words 'shall bear a stamp of one rupee, and'
Bengal Regulation No. VI of 1823.	A Regulation for authorizing the institution of summary suit to enforce the execution of certain written engagements for the cultivation and delivery of the Indigo Plant, and for declaring certain principles in regard to the same.	Section 7 and 8,
Bengal Act No. VI of 1862.	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	In section 5, the passage beginning with the words 'upon paper' and ending with 'deposit'. In section 13, the passage beginning with the words 'and be written'
Bengal Act No. II of 1869.	An Act to ascertain regulate and record certain tenures in Chota Nagpore.	Section 22.
Bengal Act No. VIII of 1869.	An Act to amend the procedure in suits between landlords and tenants.	In section 14 and 76 the words '(which may be on plain paper)'. In section 20, the words 'on plain paper.'

(e) or where the period of settlement of the district has come to an end,  
the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others :—

(f) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages ;

(g) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant ;

(h) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

14. (a). Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,  
Enhancement of rent of ex-proprietary tenants which has not been fixed by order.

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant : Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

(b). Whenever the district or tahsil, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.  
Selection of land for comparison.

(c). When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsil or in a tahsil immediately adjacent.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,  
Abatement in like cases.

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others :—

(a) that the area of the land held by him has been diminished by diluvion or otherwise :

(b) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power,

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act.

under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others :—

(a) that the area of the tenant's holding has been increased by alluvion or otherwise :

(b) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant :

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others :—

(c) that the area of the land held by him has been diminished by diluvion or otherwise ;

(d) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate ;

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the

former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise, as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension, of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

and, subject to the same rules, the landholder shall be bound by such order.



# THE TRANSFER OF PROPERTY ACT, 1882.

## CONTENTS.

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### PREAMBLE.

### CHAPTER I.

#### PRELIMINARY.

### SECTIONS.

- 1 Short title.  
Commencement.  
Extent.
2. Repeal of acts.  
Saving of certain enactments, incidents, rights, liabilities &c.
3. Interpretation-clause.
4. Enactments relating to contracts to be taken as part of Act IX of 1872.

### CHAPTER II.

#### OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A).—*Transfer of property, whether moveable or immoveable.*

5. "Transfer of property" defined.
6. What may be transferred.
7. Persons competent to transfer.
8. Operation of transfer.
9. Oral transfer.
10. Condition restraining alienation.
11. Restriction repugnant to interest created.
12. Condition making interest determinable on insolvency or attempted alienation.
13. Transfer for benefit of unborn person.
14. Rule against perpetuity.
15. Transfer to class some of whom come under sections 13 and 14.
16. Transfer to take effect on failure of prior transfer.
17. Transfer in perpetuity for benefit of public.
18. Direction for accumulation.
19. Vested interest.
20. When unborn person acquires vested interest on transfer for his benefit.



## SECTIONS.

21. Contingent interest.
22. Transfer to members of a class who attain a particular age.
23. Transfer contingent on happening of specified uncertain event.
24. Transfer to such of certain persons as survive at some period not specified.
25. Conditional transfer.
26. Fulfilment of condition precedent.
27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.
28. Ulterior transfer conditional on happening or not happening of specified event.
29. Fulfilment of condition subsequent.
30. Prior disposition not affected by invalidity of ulterior disposition.
31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.
32. Such condition must not be invalid.
33. Transfer conditional on performance of act, no time being specified for performance.
34. Transfer conditional on performance of act, time being specified.

*Election.*

35. Election when necessary.

*Apportionment.*

36. Apportionment of periodical payments on determination of interest of person entitled.
37. Apportionment of benefit of obligation on severance.

*(B).—Transfer of Immoveable Property.*

38. Transfer by person authorized only under certain circumstances to transfer.
39. Transfer where third person is entitled to maintenance.
40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership but not amounting to interest or easement.
41. Transfer by ostensible owner.
42. Transfer by person having authority to revoke former transfer.
43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
44. Transfer by one co-owner.
45. Joint transfer for consideration.
46. Transfer for consideration by persons having distinct interests.
47. Transfer by co-owners of share in common property,
48. Priority of rights created by transfer.

## SECTIONS.

- 49. Transferee's right under policy.
- 50. Rent *bona fide* paid to holder under defective title.
- 51. Improvements made by *bona fide* holders under defective titles.
- 52. Transfer of property pending suit relating thereto.
- 53. Fraudulent transfer.

## CHAPTER III.

## OF SALES OF IMMOVEABLE PROPERTY.

- 54. "Sale" defined.  
Sale how made.  
Contract for sale.
- 55. Rights and liabilities of buyer and seller.
- 56. Sale of one of two properties subject to a common charge.  
*Discharge of Incumbrances on Sale.*
- 57. Provision by Court for incumbrances and sale freed therefrom.

## CHAPTER IV.

## OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

- 58. "Mortgage," "mortgagor" and "mortgagee" defined.  
Simple mortgage.  
Mortgage by conditional sale.  
Usufructuary mortgage.  
English mortgage.
- 59. Mortgage when to be by assurance.  
*Rights and Liabilities of Mortgagor.*
- 60. Right of mortgagor to redeem.  
Redemption of portion of mortgaged property.
- 61. Right to redeem one of two properties separately mortgaged.
- 62. Right of usufructuary mortgagor to recover possession.
- 63. Accession to mortgaged property.  
Accession acquired in virtue of transferred ownership.
- 64. Renewal of mortgaged lease.
- 65. Implied contracts by mortgagor.
- 66. Waste by mortgagor in possession.  
*Rights and Liabilities of Mortgagee.*
- 67. Right to foreclosure or sale.
- 68. Right to sue for mortgage-money.
- 69. Power of sale when valid.

## SECTIONS.

- 70. Accession to mortgaged property.
- 71. Renewal of mortgaged lease.
- 72. Rights of mortgagee in possession.
- 73. Charge on proceeds of revenue-sale.
- 74. Right of subsequent mortgagee to pay off prior mortgagee.
- 75. Rights of mesne mortgagee against prior and subsequent mortgagees.
- 76. Liabilities of mortgagee in possession.  
Loss occasioned by his default.
- 77. Receipts in lieu of interest.

*Priority.*

- 78. Postponement of prior mortgagee.
- 79. Mortgage to secure uncertain amount when maximum is expressed.
- 80. Tacking abolished.

*Marshalling and Contribution.*

- 81. Marshalling securities.
- 82. Contribution to mortgage-debt.

*Deposit in Court.*

- 83. Power to deposit in Court money due on mortgage.  
Right to money deposited by mortgagor.
- 84. Cessation of interest.

*Suits for Foreclosure, Sale or Redemption.*

- 85. Parties to suits for foreclosure, sale and redemption.

*Foreclosure and Sale.*

- 86. Decree in foreclosure-suit.
- 87. Procedure in case of payment of amount due.  
Order absolute for foreclosure.  
Power to enlarge time.
- 88. Decree for sale.  
Power to decree sale in foreclosure-suit.
- 89. Procedure when defendant pays amount due.  
Order absolute for sale.
- 90. Recovery of balance due on mortgage.

*Redemption.*

- 91. Who may sue for redemption.
- 92. Decree in redemption-suit.
- 93. In case of redemption, possession.  
In default, foreclosure or sale.  
Power to enlarge time.

## SECTIONS.

- 94. Costs of mortgagee subsequent to decree.
- 95. Charge of one of several co-mortgagers who redeems.  
*Sale of Property subject to prior Mortgage.*
- 96. Sale of property subject to prior mortgage.
- 97. Application of proceeds.

*Anomalous Mortgages.*

- 98. Mortgage not described in section 58, clauses (b), (c), (d) and (e).  
*Attachment of Mortgaged Property.*

- 99. Attachment of mortgaged property.
- 100. Charges.
- 101. Extinguishment of charges.

*Notice and Tender.*

- 102. Service or tender on or to agent.
- 103. Notice, &c., to or by person incompetent to contract
- 104. Power to make rules.

## CHAPTER V.

## OF LEASES OF IMMOVEABLE PROPERTY.

- 105. Lease defined.  
Lessor, lessee, premium and rent defined.
- 106. Duration of certain leases in absence of written contract or Local usage.
- 107. Leases how made.
- 108. Rights and liabilities of lessor and lessee.  
*A.—Rights and Liabilities of the Lessor.*  
*B.—Rights and Liabilities of the Lessee*
- 109. Rights of lessor's transferee.
- 110. Exclusion of day on which term commences.  
Duration of lease for a year.  
Option to determine lease.
- 111. Determination of lease.
- 112. Waiver of forfeiture.
- 113. Waiver of notice to quit.
- 114. Relief against forfeiture for non-payment of rent.
- 115. Effect of surrender and forfeiture on underleases.
- 116. Effect of holding over.
- 117. Exemption of leases for agricultural purposes.

## CHAPTER VI.

## OF EXCHANGES.

## SECTIONS.

- 118. "Exchange" defined.
  - 119. Right of party deprived of thing received in exchange.
  - 120. Rights and liabilities of parties.
  - 121. Exchange of money.
- 

## CHAPTER VII.

## OF GIFTS.

- 122. "Gift" defined.  
Acceptance when to be made.
  - 123. Transfer how effected.
  - 124. Gift of existing and future property.
  - 125. Gift to several, of whom one does not accept.
  - 126. When gift may be suspended or revoked.
  - 127. Onerous gifts.  
Onerous gift to disqualified person.
  - 128. Universal donee.
  - 129. Saving of donations *mortis causa* and Muhammadan law.
- 

## CHAPTER VIII.

## OF TRANSFERS OF ACTIONABLE CLAIMS.

- 130. Actionable claim.
- 131. Transfer of debts.
- 132. Notice to be in writing signed.
- 133. Debtor to give effect to transfer.
- 134. Warranty of solvency of debtor.
- 135. Discharge of person against whom claim is sold.
- 136. Incapacity of officers connected with Courts of justice.
- 137. Liability of transferee of debt.
- 138. Mortgaged debt.
- 139. Saving of negotiable instruments.

## THE SCHEDULE—ENACTMENTS REPEALED.

## ACT NO. IV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 7th February 1862.)*

### An Act to amend the law relating to the Transfer of Property by act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties ;  
Preamble. It is hereby enacted as follows :—

#### CHAPTER I.

##### PRELIMINARY.

Short title. 1. This Act may be called “The Transfer of Property Act, 1882 :”

Commencement. It shall come into force on the first day of July, 1882 ;

Extent. It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of Panjab and the Chief Commissioner of British Burma.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

\* And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively, or prospectively, any part of the territories administered by such Local Government, from all or any of the following provisions, namely, sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three.

\* Notwithstanding anything in the foregoing part of this section, sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877, under the power conferred the first section of that Act or otherwise.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned.

But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(a) the provisions of any enactment not hereby expressly repealed :

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force :

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or,

(d) save as provided by section fifty-seven, and chapter four of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction : and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

“Immoveable property

“immoveable property” does not include standing timber, growing crops or grass :

“instrument :”

“instrument” means a non-testamentary instrument :

“registered” means registered in British India under the law for the time being in force regulating the registration of documents :

“attached to the earth.”

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs ;

(b) imbedded in the earth, as in the case of walls or buildings ; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached :

and a person is said to have “notice” of a fact when he actually knows

“notice :”

that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

Enactments relating to contracts to be taken as part of Act IX. of 1872.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. \* And sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall be read as supplemental to the Indian Registration Act, 1877.

## CHAPTER II.

### OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A).—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections “transfer of property” means an act by

“Transfer of property” defined,

which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and

“to transfer property,” is to perform such act.

\* Act III of 1885.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force :

(a) The change of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

\* (i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a court of wards to assign his interest as such tenant, farmer or lessee.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and, where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith ;

and, where the property is a debt or other actionable claim the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;



and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer. 9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

#### *Illustration.*

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation.

*Exception.*—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

*Explanation.*—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the

Contingent interest.

former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

*Exception.*—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer

Transfer to such of certain persons as survive at some period not specified.

#### *Illustration.*

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy.

Conditional transfer.

#### *Illustrations.*

(a). A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b). A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c). A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d). A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent.

*Illustrations*

(a). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition,

although the failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

*Illustrations.*

(a). A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b). A transfers property to his wife; but in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to

Uterior transfer conditional on happening or not happening of specified event.

accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not

happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-seven.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

*Illustration.*

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

*Illustration.*

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been interested.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section twelve, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

*Illustrations.*

(a). A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b). A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. When an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

*Election.*

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

Election when necessary.

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

*Illustrations.*

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must, out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

*Exception to the last preceding four rules.*—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

*Illustration.*

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

*Apportionment.*

36. In the absence of a contract or local usage to the contrary, all rents,

Apportionment of periodical payments on determination of interest of person entitled.

annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners, in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose :

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

#### *Illustrations.*

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

#### *B.—Transfer of Immoveable Property.*

38. Where any person, authorized only under certain circumstances to transfer, nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

#### *Illustration.*

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property, is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention

or if the transfer is gratuitous ; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

*Illustration.*

A, a Hindu, transfers Sultanpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

Where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

*Illustration.*

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

*Illustration.*

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.



43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes

Transfer by unauthorized person who subsequently acquires interest in property transferred.

to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

*Illustration.*

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share

Transfer by one co-owner.

of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to

Joint transfer for consideration.

two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by

Transfer for consideration by persons having distinct interests.

persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

*Illustrations.*

(a.) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura and B and C each to a sixteenth share in that mauza.

(b). A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Transfer by co-owners of share in common property.

#### Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights created by transfer.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Transferee's right under policy.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Rent *bonâ fide* paid to holder under defective title.

#### Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

Improvements made by *bonâ fide* holders under defective titles.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

53. Every transfer of immovable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immovable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

### CHAPTER III.

#### OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

## (1) The seller is bound—

(a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole or the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

provided that (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident;

## (4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where two properties are subject to a common charge, and one of

the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

#### *Discharge of Incumbrances on Sale.*

57. (a) Where immoveable property subject to any incumbrance,

whether immediately payable or not, is sold by the Court or in execution of a decree, or out of court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court.

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(c) After notice served on the persons interested in or entitled to the money or fund in court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

#### CHAPTER IV.

##### OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and

Simple mortgage.

the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale. (c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will retransfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Mortgage when to be by assurance.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

### *Rights and Liabilities of Mortgagor.*

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Right of mortgagor to redeem.

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

*Illustration.*

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

(a) where the mortgagee is authorized to himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.



Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall in the absence of a contract by him to the contrary, have the benefit of the new lease.

Renewal of mortgaged lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto ;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property ;

(d) and, where the mortgaged property is a lease, for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage ; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate ; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by mortgagor in possession.

*Explanation.*—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

*Rights and Liabilities of Mortgagee.*

67. In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or a usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor severed their interests under the mortgage.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only :—

(a) where the mortgagor binds himself to repay the same :

(b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor :

(c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him, without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-six, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases \* and in no others; namely,—

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist,\* or a member

\* Act III of 1885.

of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette.

(b) where the mortgagee is the Secretary of State for India in Council ;

(c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karachi or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service ; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised ; but any person damaged by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances if any, to which the sale is not made subject, or after payment into court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale ; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage ; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, \* or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette.

70. If, after the date of mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary shall, for the purposes of the security, be entitled to such accession.

#### *Illustrations.*

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

**71.** When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

Rights of mortgagee in possession.

**72.** When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(a) for the due management of the property and the collection of the rents and profits thereof;

(b) for its preservation from destruction, forfeiture or sale;

(c) for supporting the mortgagor's title to the property;

(d) for making his own title thereto good against the mortgagor; and,

(e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal-money, at the rate of interest payable on the principal, and where no such rate is fixed at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

**73.** Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue-sale.

**74.** Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgagee.

**75.** Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee, or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

Liabilities of mortgagee in possession.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own ;

(b) he must use his best endeavours to collect the rents and profits thereof ;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold ;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money ;

(e) he must not commit any act which is destructive or permanently injurious to the property ;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money ;

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported ;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money ; the surplus, if any, shall be paid to the mortgagor ;

(i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Loss occasioned by his default.

77. Nothing in section seventy-six, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Receipts in lieu of interest.

*Priority.*

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

*Illustration.*

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000, C having notice of the mortgage to B and Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section seventy-nine, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

*Marshalling and Contribution.*

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section eighty-one to the claim of the second mortgagee.

*Deposit in Court.*

83. At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Power to deposit in court money due on mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Right to money deposited by mortgagor.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in court under section eighty-three the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Cessation of interest.

Nothing in this section or in section eighty-three shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

*Suits for Foreclosure, Sale or Redemption.*

85. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Parties to suits for foreclosure, sale and redemption.

*Foreclosure and Sale.*

86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

Decree in foreclosure-suit.

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the

plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

87. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put into possession of the mortgaged property.

Procedure in case of payment of amount due.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff.

Order absolute for foreclosure.

Provided that the court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

Power to enlarge time.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree" the words "Decree absolute" shall be substituted.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-six, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Decree for sale.

In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

Power to decree sale in foreclosure-suit.

89. If in any case under section eighty-eight the defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section eighty-eight; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Procedure when defendant pays amount due.

Order absolute for sale.



90. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

*Redemption.*

91. Besides the mortgagor, any of the following persons may redeem, Who may sue for redemption. or institute a suit for redemption of, the mortgaged property :—

(a) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property ;

(b) any person having any interest in, or charge upon, the right to redeem the property ;

(c) any surety for the payment of the mortgage-debt or any part thereof ;

(d) the guardian of the property of a minor mortgagor on behalf of such minor ;

(e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot ;

(f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property ;

(g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

Decree in redemption-suit. 92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree ;

that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall retransfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property ; and

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

93. If payment is made of such amount and of such subsequent costs In case of redemption possession. as are mentioned in section ninety-four, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished :

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section ninety-two for payment to the defendant.

94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

95. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

*Sale of Property subject to prior Mortgage.*

96. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

97. Such proceeds shall be brought into court and applied as follows :—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale ;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage ;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made ;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interest therein or upon their joint receipt.

Nothing in this section or in section ninety-six shall be deemed to affect the powers conferred by section fifty-seven.

### *Anomalous Mortgages.*

98. In the case of a mortgage not being a simple mortgage, a mortgage of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-seven, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.

*Mortgage not described by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage deed, and, so far as such contract does not extend, by local usage.*

### *Attachment of Mortgaged Property.*

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-seven, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.

### *Charges.*

100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty-one and eighty-two and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immovable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

### *Notice and Tender.*

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served can not be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of court by, any person incompetent to contract, competent to contract, such notice may be served or tender or deposit made, accepted or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out in itself and in the Courts of Civil Judicature, subject to its superintendence, the provisions contained in this chapter.

## CHAPTER V.

### OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

106. In the absence of a contract or local law or usage to the contrary a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other pur-

pose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent,  
*Leases how made.* can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

108. In the absence of a contract or local usage to the contrary, the  
*Rights and liabilities of lessor and lessee.* lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

#### *A.—Rights and Liabilities of the Lessor.*

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property ;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

#### *B.—Rights and Liabilities of the Lessee.*

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and, which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth ; provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the charges caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own ; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries, not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. A lease of immoveable property determines  
(a) by efflux of the time limited thereby :

(b) where such time is limited conditionally on the happening of some event—by the happening of such event :

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :

(e) by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :

(f) by implied surrender :

(g) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void : or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease :

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

*Illustration to Clause (f).*

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section one hundred and eleven, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease, as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section one hundred and eleven, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

*Illustrations.*

(a). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease ; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees or relief against the forfeiture is granted under section one hundred and fourteen.



116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month according to the purpose for which the property is leased, as specified in section one hundred and six.

*Illustrations.*

(a). A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b). A lets a farm to B for life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may by notification published in the local official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

## CHAPTER VI.

### OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, transaction is called an "Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

120. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

## CHAPTER VII.

## OF GIFTS.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

*Illustrations.*

(a). A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A, B dies without descendants in A's lifetime. A may take back the field.

(b). A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Onerous gift to disqualified person.

#### *Illustrations.*

(a). A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b). A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section one hundred and twenty-seven, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

129. Nothing in this chapter relates to gift of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section one hundred and twenty-three, any rule of Hindu or Buddhist law.

Saving of donations mortis casua and Muhammadan law.

## CHAPTER VIII.

### OF TRANSFERS OF ACTIONABLE CLAIMS.

130. A claim which the Civil Courts recognise as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Actionable claim.

131. No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person not, being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer.

Transfer of debts.

#### *Illustration.*

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

Notice to be in writing signed.

132. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

133. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

134. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

135. Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(a) where the sale is made to the co-heir to, or co-proprietor of, the claim sold ;

(b) where it is made to a creditor in payment of what is due to him ;

(c) where it is made to the possessor of a property subject to the actionable claim ;

(d) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

136. No judge, pleader, mukhtar, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim, falling under the jurisdiction of the Court in which he exercises his functions.

137. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

#### *Illustration.*

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery ; secondly, in or towards satisfaction of the amount for the time being secured by the transfer ; and the residue, if any, belongs to the transferor.

139. Nothing in this chapter applies to negotiable instruments.

## THE SCHEDULE.

## (a) STATUTES.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c 10	Uses ...	The whole.
13 Eliz., c. 5 ...	Fraudulent conveyances	The whole.
27 Eliz., c. 4 ...	Fraudulent conveyances	The whole.
4 Wm. & Mary, c. 16	Clandestine mortgages	The whole.

## (b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX of 1842 XXXI of 1854 XI of 1855	Lease and release ... Modes of conveying land Mesne profits and im- provements.	The whole. Section 17. Section 1 ; in the title, the words " to mesne profits and" and in the pre- amble "to limit the liability for mesne profits and."
XXVII of 1866 IV of 1872	Indian Trustee Act ... Punjab Laws Act ...	Section 31. So far as it relates to Bengal Regu- lations I of 1798 and XVII of 1806.
XX of 1875	Central Provinces Laws Act.	So far as it relates to Bengal Regula- tions I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act ...	So far as it relates to Bengal Regula- tion XVII of 1806.
I of 1877	Specific Relief ...	In sections 35 and 36, the words " in writing."

## (c.) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts : Interest : Mortgages in pos- session.	Section 15.

# THE CODE OF CIVIL PROCEDURE, 1882.

## CONTENTS.

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### PREAMBLE.

### PRELIMINARY.

## PART I.

### Of Suits in General.

#### CHAPTER I.—Of the Jurisdiction of the Courts and Res Judicata.

- „ II.—Of the Place of Suing.
- „ III.—Of Parties and their Appearances, Applications and Acts.
- „ IV.—Of the Frame of the Suit.
- „ V.—Of the Institution of Suits.
- „ VI.—Of the Issue and Service of Summons.  
*Issue of Summons.*
- „ VII.—Of the Appearance of the Parties and Consequence of Non-Appearance.
- „ VIII.—Of Written Statements and Set-off.
- „ IX.—Of the Examination of the Parties by the Court.
- „ X.—Of Discovery and of the Admission. Inspection, Production, Impounding and Return of Documents.
- „ XI.—Of the Settlement of Issues.
- „ XII.—Disposal of the Suit at the first Hearing.
- „ XIII.—Of Adjournments.
- „ XIV.—Of the Summoning and Attendance of Witnesses.
- „ XV.—Of Hearing of the Suit and Examination of Witnesses.
- „ XVI.—Of Affidavits.
- „ XVII.—Of Judgment and Decree.
- „ XVIII.—Of Costs.
- „ XIX.—Of the Execution of Decrees.
- „ XX.—Of Insolvent Judgment-Debtors.

## PART II.

### Of Incidental Proceedings.

- „ XXI.—Of the Death, Marriage and Insolvency of Parties.
- „ XXII.—Of the Withdrawal and Adjustment of Suits.

**CHAPTER XXIII.—Of Payment into Court.**

- „ **XXIV.—Of Requiring Security for Costs.**
- „ **XXV.—Of Commissions.**

**PART III.****Of Suits in Particular Cases.**

- „ **XXVI.—Suits by Paupers.**
- „ **XXVII.—Suits by or against Government or Public Officers.**
- „ **XXVIII.—Suits by aliens and by or against Foreign and Native Rulers.**
- „ **XXIX.—Suits by and against corporations and Companies.**
- „ **XXX.—Suits by and against Trustees, Executors and Administrators.**
- „ **XXXI.—Suits by and against Minors and Persons of unsound mind.**
- „ **XXXII.—Suits by and against military Men.**
- „ **XXXIII.—Interpleader.**

**PART IV.****Provisional Remedies.**

- „ **XXXIV.—Of Arrest and Attachment before Judgment.**
- „ **XXXV.—Of temporary Injunctions and Interlocutory Orders.**
- „ **XXXVI.—Appointment of Receivers.**

**PART V.****Of Special Proceedings.**

- „ **XXXVII.—Reference to Arbitration.**
- „ **XXXVIII.—Of Proceedings on agreement of Parties.**
- „ **XXXIX.—Of summary Procedure on Negotiable Instruments.**
- „ **XL.—Of Suits relating to Public Charities.**

**PART VI.****Of Appeals.**

- „ **XLI.—Of Appeals from original Decrees.**
- „ **XLII.—Of Appeals from Appellate Decrees.**

CHAPTER XLIII.—Of Appeals from Orders.

„ XLIV.—Of Pauper Appeals.

„ XLV.—Of Appeals to the Queen in Council.

---

PART VII.

„ XLVI.—Of Reference to and Revision by the High Court.

---

PART VIII.

„ XLVII.—Of Review of Judgment.

---

PART IX.

„ XLVIII.—Special Rules relating to the Chartered High Courts.

---

PART X.

„ XLIX.—Miscellaneous.

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# THE CODE OF CIVIL PROCEDURE.

BEING  
**ACT NO. XIV OF 1882.**

PASSED BY THE GOVERNOR GENERAL IN COUNCIL.

*(Received the assent of the Governor General on the 17th March 1882.)*

An Act to consolidate and amend the laws relating to the  
Procedure of the Courts of Civil Judicature.

Whereas it is expedient to consolidate and amend the laws relating to  
the procedure of the Courts of Civil Judicature;  
Preamble. It is hereby enacted as follows:—

## PRELIMINARY.

Short title. 1. This Act may be cited as "The Code of Civil  
Commencement. Procedure;" and it shall come into force on the  
first day of June, 1882.

Local extent. This section and section 3 extend to the whole of British India. The  
other sections extend to the whole of British India  
except the Scheduled Districts as defined in Act  
No. XIV of 1874.

Interpretation clause. 2. In this Act, unless there be something repu-  
nant in the subject or context—

Chapter. "Chapter" means a chapter of this Code.

"district" means the local limits of the jurisdiction of a principal  
Civil Court of original jurisdiction (hereinafter  
called a 'District Court'), and includes the local

"District Court," limits of the ordinary original civil jurisdiction of  
a High Court: every Court of a grade inferior  
to that of a District Court and every Court of Small Causes shall, for the  
purposes of this Code, be deemed to be subordinate to the High Court and  
the District Court:

"pleader" means every person entitled to appear and plead for another  
in Court, and includes an advocate, a vakil and an  
attorney of a High Court:

"Government Pleader" includes also any officer appointed by the Local  
Government to perform all or any of the functions  
expressly imposed by this Code on the Government  
Pleader:

"Collector." "Collector" means every officer performing the  
duties of a Collector of land revenue:

**"decree"** means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition:

**"order"** means the formal expression of any decision of a Civil Court which is not a decree as above defined:

**"judgment:"** "judgment" means the statement given by the Judge of the grounds of a decree or order:

**"Judge:"** "Judge" means the presiding officer of Court:

**"judgment-debtor:"** "judgment-debtor" means any person against whom a decree or order has been made:

**"decree-holder"** means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred:

**"written:"** "written" includes printed and lithographed, and "writing" includes print lithography:

**"signed"** includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to:

**"foreign Court"** means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor General in Council:

**"foreign judgment:"** "foreign judgment" means the judgment of a foreign Court:

**"public officer."** "public officer" means a person falling under any of the following descriptions (namely):—

every Judge;

every covenanted servant of Her Majesty;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the 'Code of Civil Procedure,' or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted before 1st June 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under section 320, and every notification published before the same day, purporting to be issued under section 350, shall be deemed to have been respectively passed and issued in accordance with law.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865 :

The Burma Courts Act, 1875 :

The Panjab Courts Act, 1877 :

The Oudh Civil Courts Act, 1879 :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall for the purposes of this Code be deemed to be the District Court.

4A.\* (1.) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government,

Power to modify the Code in its application to Revenue Courts.

\* Act VII of 1838.

with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare that any portions of those provisions shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2.) 'Revenue Court' in sub-section (1) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which its cognizance is not barred by any enactment for the time being in force.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

Saving of jurisdiction of procedure—

(a) of Military Courts of Request;

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request;

(c) of Village Munsifs and Village Panchayats in Madras;

(c) of Village Munsifs or Village Panchayats under the provisions of the Madras Code;

(d) of Recorder of Rangoon sitting as Insolvent Court.

(d) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon Maulmain, Akyab or Bassein,

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. With respect to

(a) the jurisdiction exercised by certain jagírdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act XV of 1840 in the cases therein mentioned; and

Saving of certain Bombay laws.

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 3, 25, 86, 223, 225, 286, and chapter XXXIX \* and by the Presidency Small Cause Courts Act, 1882, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

†	†	†	†
Division of Code.	9. This Code is divided into ten Parts as follows :—		
The first part :	Suits in General.		
The second Part :	Incidental Proceedings.		
The third Part :	Suits in particular Cases.		
The fourth Part :	Provisional Remedies.		
The fifth Part :	Special Proceedings.		
The sixth Part :	Appeals.		
The seventh Part :	Reference to and Revision by the High Court.		
The eighth Part :	Review of Judgment.		
The ninth Part :	Special Rules relating to the Chartered High Courts.		
The tenth Part :	Certain miscellaneous Matters.		

## PART I.

### Of Suits in General.

#### CHAPTER I.

##### OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

Courts to try all civil suits unless specially barred.

*Explanation*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before Her Majesty in Council.

Pending suits,

\* Act XV of 1882.

† Repealed by Act VII of 1888.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

*Explanation I.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation II.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation III.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

*Explanation IV.*—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

*Explanation V.*—Where persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

*Explanation VI.*—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(a) if it has not been given on the merits of the case :

(b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India :

(c) if it is in the opinion of the Court before which it is produced contrary to natural justice :

(d) if it has been obtained by fraud :

(e) if it sustains a claim founded on a breach of any law in force in British India.

\*Where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa except a Court of Record established by Letters Patent of Her Majesty or any predecessor of Her Majesty or a Supreme Consular Court established by an order of Her Majesty in Council, the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed.

## CHAPTER II.

## OF THE PLACE OF SUING.

Court in which suit to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

(a) for the recovery of immoveable property,

(b) for the partition of immoveable property,

(c) for the foreclosure or redemption of a mortgage of immoveable property.

(d) for the determination of any other right to or interest in immoveable property,

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

*Explanation*—In this section ‘property’ means property situate in British India.

16A.\* (I) When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts

Place for institution of suit where local limits of jurisdiction of Courts are uncertain.

any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to

that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (I), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection if in its opinion there was, at the time of the institution of the suit, any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto.

Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the cause of action arises, or

(b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain : or



(c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain : provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation II.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Explanation III.\**—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely :—

- (i) the place where the contract was made ;
- (ii) the place where the contract was to be performed or performance thereof completed ;
- (iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

*Illustrations.*

(a.) A is a tradesman in Calcutta. B carries on business in Dehli. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Dehli, where B carries on business.

(b.) A resides at Simla, B at Calcutta, and C at Dehli. A, B and C being together at Benares, B and C make a joint promissory-note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides ; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

18. In suits for compensation for wrong done to person or moveable property if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

*Illustrations.*

(a.) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b.) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(c.) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the company either at Howrah or at Allahabad.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of

Suits for immoveable property situate in single district, but within jurisdictions of different Courts.

the property is situate ; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

**20.** If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the court accordingly ;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled ; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

**21.** Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaintiff shall not be chargeable with any court-fee ; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

**22.** Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly ; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

**23.** Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

**24.** Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate ;

and such High Court shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

**25.** The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

### CHAPTER III.

#### OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

**26.** All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

**27.** Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, at any stage of the suit\* if satisfied that the suit has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons with his or their consent\* to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

**28.** All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against

\* Act VII of 1938.

such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

Joinder of parties liable on same contract.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued or may defend, in such suit, on behalf of all parties so interested.

One party may sue or defend on behalf of all in same interest.

But the Court shall in such case give, at the plaintiff's expense notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit not to fail by reason of misjoinder.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out ;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of person added as plaintiff or next friend.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

All parties whose names are so added as defendants shall be served with

Defendants added to be served.

a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

Where defendant added, plaintiff to amend.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding under this Code; and in like manner when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any such proceeding.

Authority to be in writing signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

### *Recognized Agents and Pleadors.*

36. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf;

Provided that any such appearance shall be made by the party in person, if the Court so direct.

37. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the

Local Government may from time to time, by notification in the official Gazette, declare in this behalf.

38. Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

Service of process on recognized agent.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in court.

Appointment of pleader.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Service of process on pleader.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Agent to receive process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in court.

His appointment to be in writing and to be filed in court.

## CHAPTER IV.

### OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to be framed.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and collateral security for its performance shall be deemed to constitute but one cause of action.

*Illustration.*

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

**44. Rule a.**—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, or to obtain a declaration of title to immovable property, except—

(a) claims in respect of mesne profits or arrears of rent in respect of the property claimed,

(b) damages for breach of any contract under which the property or any part thereof is held, and

(c) claims by a mortgagee to enforce any of his remedies under the mortgage.

**Rule b.**—No claim by or against an executor, administrator or heir as such shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff of defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

**45.** Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

But if it appear to the Court that any such causes of action can not be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

**46.** Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

## CHAPTER V.

### OF THE INSTITUTION OF SUITS.

48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

49. The plaint must be distinctly written in the language of the Court ; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English ; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

50. The plaint must contain the following particulars :—

- (a) the name of the Court in which the suit is brought ;
- (b) the name, description and place of residence of the plaintiff ;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained ;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose ;
- (e) a demand of the relief which the plaintiff claims ; and
- (f) if the plaintiff has allowed a set off or relinquished a portion of his claim, the amount so allowed or relinquished.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaint should shew, not only that he has an actual existing interest in the subject-matter but that he has taken the steps necessary to enable him to institute a suit concerning it.

#### *Illustrations.*

- (a) A sues as B's executor. The plaint must state that A has proved B's will.
- (b) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.
- (c) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been especially appointed D's guardian.



Defendant's interest and liability to be shewn.

The plaintiff must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

*Illustration.*

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaintiff must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaintiff must shew the ground upon which exemption from such law is claimed.

51. The plaintiff shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

Plaints to be signed and verified.

Provided that if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as the matters stated on information and belief, and that as to those matters he believes it to be true.

The verification shall be signed by the person making it.

Verification to be signed and attested.

When plaint may be rejected, returned for amendment or amended.

53.\* The plaintiff may, at the discretion of the Court,—

(a) at, or at any time before, the settlement of issues be rejected if it does not disclose a cause of action ;

(b) at, or at any time before, the settlement of issues be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it—

(i) is not signed and verified as hereinbefore required,

(ii) does not state correctly and without prolixity the several particulars hereinbefore required, or contains particulars other than those so required,

(iii) is wrongly framed by reason of nonjoinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or

(iv) is not framed in accordance with the provisions of section 42 ;

(c) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit :

Provided that a plaintiff shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

When a plaintiff is amended under this section the amendment shall be attested by the signature of the Judge.

When plaintiff shall be rejected.

54. The plaintiff shall be rejected in the following cases :—

(a) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :

(b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so :

(c) if the suit appears from the statement in the plaint to be barred by any positive rule of law :

(d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Procedure on rejecting  
plaint.

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

56. The rejection

When rejection of plaint  
does not preclude presenta-  
tion of fresh plaint.

of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When plaint shall be re-  
turned to be presented to  
proper Court.

57. The plaint shall be returned to be presented to the proper Court in the following cases :—

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law :

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented :

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain within such local limits.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on returning  
plaint.

58. The plaintiff

Procedure on admitting  
plaint.

shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it ; and, if the plaint be admitted, shall present as many copies on the plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient

Concise statements.

reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

*Register of suits.*

Production of document on which plaintiff sues. Delivery of document or copy.

filed with the plaint.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

List of other documents.

Statement in case of documents not in his possession or power.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Production of shop-book.

Original entry to be marked and returned.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purposes of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct, shall return the book to the plaintiff and cause the copy to be filed.

63. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

## CHAPTER VI.

### OF THE ISSUE AND SERVICE OF SUMMONS.

#### *Issue of Summons.*

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

Summons.

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

No party to be ordered to appear in person unless resident.

67. No party shall be ordered to appear in person unless he resides.

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty, or, where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles

within 50 or, where there is railway, 200 miles.

from the court-house.

68. The Court shall determine, at the time of issuing the summons,

Summons to be either to settle issues or for final disposal.

whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly :

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the

Fixing day for appearance of defendant.

Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons; and the

day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

*Service of Summons.*

**72.\*** (1) If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates.

Delivery or transmission of summons for service.

(2) The proper officer may be an officer of another Court than that in which the suit is instituted, and, where he is such an officer, the summons may, subject to any rules which the High Court may make in this behalf, be sent to him by post or in such other manner as the Court may direct.

**73.** Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Mode of service.

Service on several defendants.

**74.** When there are more defendants than one, service of the summons shall be made on each defendant.

Provided that, if the defendants are partners, and the suit relates to a partnership transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Service to be on defendant in person when practicable, or on his agent.

**75.** Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

**76.** In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agent by whom defendant carries on business.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

**77.** In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Service on agent in charge, in suits for immoveable property.

**78.** If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

When service may be on male member of defendant's family.

*Explanation.*—A servant is not a member of the family within the meaning of this section.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Person served to sign acknowledgment.

Procedure when defendant refuses to accept service,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made.

the serving-officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

80. If the defendant or other person refuses to sign the acknowledgment.

Endorsement of time and manner of service.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, the time when and the manner in which the summons was served.

82. \* When a summons is returned under section 80, the Court shall if the return under that section has not been verified by the affidavit of the serving-officer, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching his proceedings and may make such further enquiry in the matter as it thinks fit ; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Examination of serving-officer.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

Effect of substituted service.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

When service substituted, time for appearance to be fixed.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers

Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record [if any] made under this paragraph.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

Service, within Presidency-towns and Rangoon, of process issued by provincial Courts.

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service on defendant in jail.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Procedure if jail be in different district.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

90. \* If there is a British Resident or Agent, or a Superintendent appointed by the British Government, or a Court established or continued by the authority of the Governor General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant ; and, if the Resident, Agent, Superintendent or Judge returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.

Service in foreign territory through British Resident or Court.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

*Service of process.*

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

*Postage.*

95. Postage, where chargeable on any notice, summons or letter issued under this code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, a fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

## CHAPTER VII.

### OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed.



Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

99A. If, after a summons has, whether before or after the first day of June, 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure if only plaintiff appears,

when summons duly served,

when summons not duly served,

when summons served, but not in due time,

day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.

100. If the plaintiff appears and the defendant does not appear, the procedure shall be as follows :

(a) If it is proved that the summons was duly served, the Court may proceed *ex parte* :

(b) If it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant :

(c) If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

102. If the defendant appears and the plaintiff does not appear, the

Procedure where defendant only appears.

Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

103. When a suit is wholly or partially dismissed under section 102,

Decree against plaintiff by default bars fresh suit.

the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

104. If, on the day fixed for the hearing of a suit against a defendant

Procedure where defendant residing out of British India does not appear.

residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

105. If there be more plaintiffs than one, and one or more of them

Procedure in case of non-attendance of one or more of several plaintiffs.

appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

106. If there be more defendants than one, and one or more of them

Procedure in case of non-attendance of one or more of several defendants.

appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

107. If a plaintiff or defendant, who has been ordered to appear in

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants respectively, who do not appear.

#### *Of setting aside Decrees ex parte.*

Setting aside decree *ex parte* against defendant.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

No decree to be set aside without notice to opposite party. 109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

## CHAPTER VIII.

### OF WRITTEN STATEMENTS AND SET-OFF.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

#### *Illustrations.*

(a.) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b.) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c.) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d.) A sues B on a bill of exchange for Rs. 500, B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e.) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f.) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g.) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h.) A owes the partnership-firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

No written statement to be received after first hearing.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit :

Provided that the Court may at any time require a written statement, or an additional written statement, from any of the parties, and fix a time for presenting the same :

Provisoos.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

Procedure when party fails to present written statement called for by Court.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

114. Written statements shall be as brief as the nature of the case

Frame of written statements.

admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

115. Written statements shall be signed and verified in the manner

Written statements to be signed and verified.

hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

116. If it appears to the Court that any written statement, whether

Power of Court as to argumentative, prolix or irrelevant written statements.

called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Attestation of amendments.

When any amendment is made under this section the Judge shall attest it by his signature.

When a statement

Effect of rejection.

the Court.

has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by

## CHAPTER IX.

## OF THE EXAMINATION OF THE PARTIES BY THE COURT.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in plaint and written statements admitted or denied

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Oral examination of party, or companion of himself or his pleader.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Substance of examination to be written.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

Consequence of refusal or inability of pleader to answer.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

## CHAPTER X.

## OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

121. Any party may at any time by leave of the Court deliver through the Court interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Power to deliver interrogatories.

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81 and 82 shall, in the latter case, apply so far as may be practicable.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

124. If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bona fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof or within such further time as the Judge may allow.

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *viva voce* examination as the Judge may direct: Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party or his pleader and filed in court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have

been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Power to order discovery of document.

Every affidavit made under this section shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with

the grounds of such objection.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

131. Any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

Notice to produce for inspection documents referred to in plaint &c.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Consequence of non-compliance with such notice.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Party receiving such notice to deliver notice when and where inspection may be had.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection the party desiring it may apply to the Court for an order of inspection.

Application for order of inspection.

134. Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit shewing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

Application to be founded on affidavit.

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and

Power to order issue or question on which right to discovery depends to be first determined.

if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection.

136. If any party fails to comply with any order under this chapter, to answer interrogatories or for discovery, production

Consequences of failure to answer or give inspection.

or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered;

and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

137. The Court may of its own accord, and may in its discretion upon

Court may send for papers from its own records or from other Courts.

the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, shewing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 1871, would be inadmissible in the suit.

138. The parties or their pleaders shall bring with them and have in

Documentary evidence to be in readiness at first hearing.

readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all the documents which the Court at any time before such hearing has ordered to be produced.

139. No documentary evidence in the possession or power of any party which should have been, but has not been, produced

Effect of non production of documents.

in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.



**140.** The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct.

Documents to be received by Court.  
Rejection of irrelevant or inadmissible documents.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

**141.\*** (1) Subject to the provisions of the next following sub-section, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted, and the endorsement shall be signed by the Judge.

(2) If a document so admitted is an entry in a book, account or record and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed by the Judge.

**141A.** (1) If a document admitted in evidence in the suit is an entry in a shop-book or other account in current use, the party on whose behalf the account is produced may furnish a copy of the entry.

(2) If such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (i) where the record, book or account is produced on behalf of a party, then by that party, or
- (ii) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) When a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 62, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

**142.** When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of section 141, sub-section (1), and a statement of its having been rejected, and the endorsement shall be signed by the Judge.

**142A.** (1) Every document which has been admitted in evidence as aforesaid, or a copy thereof where a copy has been substituted for the original under section 141A, shall form part of the record of the suit.

(2) Documents not so admitted in evidence shall not form part of the record and shall be returned to the parties respectively producing them.

143. Notwithstanding anything contained in section 62, \* section 141A, sub-section (3) or section 142 A, sub-section (2), the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same :

When document may be returned before time limited.

a certified copy of such

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer document to be substituted for the original :

Certain documents not to be returned.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

Receipt to be given for returned document.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

## CHAPTER XI.

### . OF THE SETTLEMENT OF ISSUES.\*

Framing of issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds - (a) issues of fact, (b) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed.

147. The Court may frame the issues from all or any of the following materials :—

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons ;
- (b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit ;
- (c) the contents of documents produced by either party.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

149. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing :—

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court ;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement ;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

## CHAPTER XII.

## DISPOSAL OF THE SUIT AT THE FIRST HEARING.

If parties not at issue on any question of law or fact.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

If one of several defendants be not at issue with plaintiff.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

If parties at issue on questions of law or fact,

at once supply is required

Court may determine issue,

and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit :

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment, or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

## CHAPTER XIII.

## OF ADJOURNMENTS.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment :

Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in

attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

## CHAPTER XIV.

### OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered or sent\* for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to person whose attendance is required either to give evidence or to produce documents.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance.

Scale of expenses. If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned ; or the Court may discharge the person summoned without requiring him to give evidence ; or may both order such levy and discharge such person as aforesaid.

**163.** Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place of attendance to be specified in summons. at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes ; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

**164.** Any person may be summoned to produce a document without being summoned to give evidence ; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

**165.** Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

**166.** Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant ; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

**167.** The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

**168.** If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall\* if the certificate of the serving-officer has not been verified, by affidavit, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the non-service :

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named

therein ; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any :

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

171. Subject to the rules of this Code as to attendance and appearance of witnesses and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

*Explanation.*—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distant from the Court-house.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

## CHAPTER XV.

### OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party, having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.



*Explanation.*—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

Statement and production of evidence by other party.

180. The other party shall then state his case and produce his evidence (if any).

Reply by party beginning.

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

181. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

182. In cases in

How evidence shall be taken in appealable cases.

which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

183. If the evidence is taken down under section 182 in a language

When deposition to be interpreted.

different from that in which it was given, and the witness, does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

184. In cases in which the evidence is not taken down in writing by

Memorandum when evidence not taken down by Judge.

the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

185. Where English is not the language of the Court, but all the

When evidence may be taken in English.

parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

185A.\* (1) The Local Government may, by notification in the official

Power for Local Government to require evidence to be recorded in English.

Gazette, direct, with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall, instead of being taken down in the manner

prescribed in the foregoing sections, be taken down by him with his own hand in the English language.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

(3) Evidence taken down under sub-section (1) or sub-section (2) shall be in the form mentioned in section 182, and be read over and signed, and, as occasion may require, interpreted and corrected, as if it were evidence taken down under that section.

(4) The Local Government may, by notification in the official Gazette, revoke or vary a direction notified under sub-section (1).

186. The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

191.\* (1) Where the Judge taking down any evidence, or causing any memorandum to be made, under this Chapter, is prevented by death, transfer or other cause from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum as if he himself had taken it down or caused it to be made, and proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-section (1) shall apply, so far as they can be made applicable, to a suit transferred under section 25 :

Provided that a Court transferring a suit under that section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined and take their evidence afresh.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit. A \* Court continuing a suit under section 191 may recall and re-examine a witness who has departed in accordance with section 173.

## CHAPTER XVI.

### OF AFFIDAVITS.

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bona-fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

195. Upon any application evidence may be given by affidavit, but the Court may at the instance of either party order the attendance for cross-examination of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code from personal appearance in court, or the Court otherwise directs.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of declarant by whom to be administered. 197. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

## CHAPTER XVII.

### OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment when pronounced.  
Power to pronounce judgment written by judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced.

Language of judgment.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Translation of judgment.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgment to be dated and signed.

Judgments of Small Cause Courts.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Judgments of other Courts.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Court to state its decision on each issue.  
Exception.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Date of decree.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

209. When \* a decree is for the payment of money the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

\* Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

210. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

And after the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

211. When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in

whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs,) with interest thereupon at such rate as the Court thinks fit.

*Explanation.*—‘Mesne profits’ of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

212. When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent ;

and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.\*

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not herein-before provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

216.† If the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Effect of decree as to sum awarded to defendant.

\* The provisions of this section shall apply whether the set-off is admissible under section III or otherwise.

Certified copies of judgment and decree to be furnished.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

## CHAPTER XVIII.

### OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Costs of applications.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Judgment to direct by whom costs to be paid.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power :

Power of Court as to costs.

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

Costs may be set-off against sum admitted or found to be due. 221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

Interest on costs.  
Payment of costs out of subject-matter.

## CHAPTER XIX.

### OF THE EXECUTION OF DECREES.

#### *A.—Of the Court by which Decrees may be executed.*

223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

Court by which decree may be executed.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed \* in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224.† The Court sending a decree for execution under section 223 shall send

(a) a copy of the decree ;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted ; and

(c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

225. The Court to which a decree is so sent shall cause such copies and

Court receiving copies of decree, &c., to file same without proof.

certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

226. When such copies are so filed, the decree or order may, if the

Execution of decree or order by Court to which it is sent.

Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

\* Act VII of 1888.

† A Court sending a decree to itself in a different capacity shall not send the papers See section 34, Act IX of 1887.



**227.** If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

**228.** The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

**229.** A decree of any Court established or continued\* by the authority of the Governor General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

**229A.\*** So much of the foregoing sections of this Chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

**229B.†** The Governor General in Council may from time to time, by notification in the Gazette of India.

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with Her Majesty and not established or continued by the authority of the Governor General in Council, may be executed in British India as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

#### *B.—Of Application for Execution.*

**230.** When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely)—

(a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

\* Act VII of 1888.

† Section 434 of the Code transposed by Act VII of 1888.

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment of delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

\* \* \* \* \*

**231.** If a decree has passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**232.** If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided as follows :—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

Transferee to hold subject to equities enforceable against original holder.

**233.** Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

If judgment-debtor die before execution, application may be made against his representative.

**234.** If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

**235.** The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely)—

- (a) the number of the suit ;
- (b) the names of the parties ;

- (c) the date of the decree ;
- (d) whether any appeal has been preferred from the decree ;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree ;
- (f) whether any and what previous applications have been made for execution of the decree and with what result ;
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby ;
- (h) the amount of costs, if any, awarded ;
- (i) the name of the person against whom the enforcement of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property to be accompanied with inventory.

237. Whenever an application is made for the attachment of any immovable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immovable property.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

When application must be accompanied by extract from Collector's register.

### *C.—Of staying Execution.*

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto ;

When Court may stay execution.

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order

the restitution or discharge of such property or person pending the result of the application for such order.

**240.** Before passing an order under section 239 to stay execution, or for the restitution of property, or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Power to require security from, or impose conditions upon, judgment-debtor.

Liability of judgment-debtor discharged to be retaken.

**241.** No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

**242.** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

**243.** If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

Stay of execution pending suit between decree-holder and judgment-debtor.

#### *D.—Questions for Court executing Decree.*

Questions to be decided by Court executing decree.

**244.** The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely)—

(a) questions regarding the amount of any mesne profits as to which the decree has directed inquiry ;

(b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree ;

(c)\* any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section.

#### *E.—Of the Mode of executing Decrees.*

**245.** The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with ; and if they have not been complied with, the Court may reject the application, or may

Procedure on receiving application for execution of decree.

\* Act VII of 1888.

allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application :

Procedure on admitting application.

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

**245A.\*** Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of any woman in execution of a decree for money.

Prohibition of arrest or imprisonment of women in execution of decrees.

**245B. (1)** Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree.

Discretionary power to permit other judgment-debtors to show cause against imprisonment.

(2). If appearance is not made in obedience to the notice, the Court shall, if the decree-holder so require issue a warrant for the arrest of the judgment-debtor.

**246.** If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

Cross-decrees.

If the two sums be equal, satisfaction shall be entered upon both decrees.

*Explanation. I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

*Explanation II.*—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

*Explanation III.*—This section does not apply unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits : and

the sums due under the decrees are definite. \*

#### *Illustrations.*

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

**247.** When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

Cross-claims under same decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

**248.** The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, why the decree should not be executed against him,

Notice to show cause why decree should not be executed.

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made :

PROVISO.

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution, is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

*Explanation.*—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

**249.** If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

Procedure after issue of notice.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit.

**250.** When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall subject to the provisions of sections 245A and 245B, issue its warrant for the execution of the decree.

Warrant when to issue.

**251.** Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

Date, signature, seal and delivery.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Decree against representative of deceased for money to be paid out of deceased's property.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property :

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the

Decree against surety.

decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant :

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise,

Decree for money.

may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

Decree for mesne profits or other matter, amount of which to be subsequently ascertained.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree ; or
- (b) out of Court to the decree-holder ; or
- (c) otherwise as the Court which made the decree directs.

**257A.** Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

**258.** If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

Unless\* such a payment or adjustment has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.

**259.** If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 203, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.



260. When the party against whom a decree for the specific perform-

Decree for specific performance or restitution of conjugal rights.

ance of a contract, or for restitution of conjugal rights or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

261. If the decree be for the execution of a conveyance, or for the

Decree for execution of conveyances, or endorsement of negotiable instruments.

endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a negotiable

Form and effect of execution of conveyance by Court.

instrument, by the Court under the last preceding section may be in the following form: "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

263. If the decree be for the delivery of any immoveable property,

Decree for immoveable property.

possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his

behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property :

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

*F.—Of Attachment of Property.*

266. The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

(a) the necessary wearing apparel and bedding\* of the judgment-debtor, his wife and children ;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain\* as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;

(c) the materials of houses and other buildings belonging to and occupied by agriculturists ;

(d) books of account ;

(e) mere rights to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;

(h)\* the salary of a public officer or of any servant of a Railway Company or local authority to the extent of—

(i) the whole of the salary where the salary does not exceed twenty rupees monthly ;

(ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and

(iii) one moiety of the salary in any other case.

(i) the pay and allowances of persons to whom the Native Articles of War apply ;

(j) the wages of labourers and domestic servants ;

(k) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(l) a right to future maintenance.

(m)\* any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree ;

(n)\* where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law applicable to him is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i), (j), and (m)\* are exempt from attachment or sale whether before or after they are actually payable :

Provided also that nothing in this section shall be deemed

(a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(b) to affect the Army Act, 1881, or any similar law for the time being in force.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

268. In the case (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court ;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon ;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

The Local Government may from time to time make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to the further orders of the Court.

271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Provided that, if the room be in the actual occupancy of a woman, who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming

payable thereon, may be held subject to the further orders of the Court from which the notice issues :

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

273. If the property be a decree for money passed by the Court which Attachment of decrees passed the decree sought to be executed, the for money. attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice Attachment of other in writing, under the hand of the Judge of the Court decrees. which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way ; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree holders to give information. The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

274. If the property be immoveable, the attachment shall be made by Attachment of immove- an order prohibiting the Judgment-debtor from able property. transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

**282.** If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Continuance of attachment subject to claim of incumbrancer.

**283.** The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

**284.** Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold and proceeds to be paid to person entitled.

**285.** Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim there-to and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts.

#### *G.—Of Sale and Delivery of Property.*

##### *(a) General Rules.*

**286.** Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

Sales by whom conducted and how made.

**287.** When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

Proclamation of sales by public auction.

[a] the property to be sold ;  
[b] the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government ;

[c] any incumbrance to which the property is liable ;  
[d] the amount for the recovery of which the sale is ordered ; and  
[e] every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules

Rules to be made by High Court.

so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale.

291. The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officers or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

292. No officer having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.



Decree-holder not to bid for or buy property without permission.

294. No holder of decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the decree-holder.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided as follows:—

Proviso where property to be divided rateably among decree-holders.

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance, thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-moneys due on the incumbrance:

thirdly, in discharging the interest and principal-money due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(b) *Rules as to Moveable Property.*

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

299. When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (or as the case may be); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Vesting order in case of other property.

(c) *Rules as to Immoveable Property*

What Courts may order sales of land.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into court and not to the judgment-debtor:

Certificate to judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

Deposit by purchaser of immoveable property.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

Time for payment in full.

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

310 A. \* Any person whose immoveable property has been sold under this Chapter may at any time within thirty days from the date of sale apply to have the sale set aside on his depositing in Court :—

(a) for payment to the purchaser, a sum equal to five per centum of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale :

Provided that, if a person applies under the next following section to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section. Nothing in this section contained shall be construed to relieve the judgment-debtor from any liability he may be under in respect of costs and interests not covered by the proclamation of sale.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit : provided that no order to set aside

sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

315. When a sale of immoveable property is set aside under section 310 A, 312 or 313.  
If sale set aside, price to be returned to purchaser.

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it.

the purchaser shall be entitled to receive back, his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

319. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

320. The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area, the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in immoveable property, shall be transferred to the Collector, and rescind modify any such declaration.

The Local Government may also, notwithstanding anything hereinbefore contained from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court.

Rules\* under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the

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\* Act VII of 1888.



Collector, including the powers of the Court under sections 294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders, being subject to appeal to and revision by superior Revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders, would be subject to appeal to and revision by appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act No. XVIII of 1850 (*an Act for the protection of Judicial Officers*).

Power of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

- (a) proceed as the Court would proceed under section 305 ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

- (a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;
- (b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.



**322B.** Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may from time to time adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

**322C.** The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances, of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the enquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

**322D.** The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

**323.** Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-authority.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

324A. The Collector shall from time to time render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Application of balance. Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immovable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied ;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

**325.** When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

- Sales how to be conducted.**
- (a) fix a reasonable reserved price for each lot ;
  - (b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment ;
  - (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

**325A.** So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any civil Court issue any process against such property or part in execution of a decree for money.

During the same period no civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

**325B.** When the property of which the sale has been ordered is situated in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

**325C.** In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a civil Court to compel the attendance of parties and witnesses and the production of documents.

**326.** When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

**Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.**

**Provision where property is in several districts.**

**Powers of Collector to compel attendance of parties and witnesses and production of documents.**

**When Court may authorize Collector to stay public sale of land.**

327. The Local Government may from time to time, with the sanction of the Governor General in Council, make

Local rules as to sales of land in execution of decrees for money.

special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value :

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may from time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

#### *H.—Of Resistance to Execution.*

328. If, in the execution of a decree for the possession of property,

Procedure in case of obstruction to execution of decree.

the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

329. If the Court is satisfied that the obstruction or resistance was

Procedure in case of obstruction by judgment-debtor or at his instigation.

occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

330. If the Court is satisfied that the resistance or obstruction was

Procedure when obstruction continues.

without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into possession of the property.

331. If the resistance or obstruction has been occasioned by any person

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant ;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

**332.** If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

Transfer of property by judgment-debtor after institution of suit.

**333.** Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

**334.** If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

**335.** If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

*I.—Of arrest and imprisonment.*

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned;

Provided as follows:—

[a] for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw: and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Proviso.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest:

But if he fails so to apply, the Court may either direct the security to be realised or commit him to jail in execution of the decree.

In the case of a surety such security may be realised in manner provided by section 253.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

337A.\* (1) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instal-

Warrant for arrest to direct judgment-debtor to be brought up.

Proceedings on appearance of judgment-debtor in obedience to notice under section 245B, or after arrest in execution of decree for money.

ments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be.

(2) Before making an order under sub-section (1), the Court shall take into consideration any allegation of the decree-holder touching any of the following matters, namely :—

(a) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account ;

(b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;

(c) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors ;

(d) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it ;

(e) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (b) of this sub-section.

(3) While any of the matters mentioned in sub-section (2) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

(4) A judgment-debtor released under this section may be re-arrested.

(5) If the Court does not make such an order as is mentioned in sub-section (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail.

338. The Local Government may from time to time prescribe scales, graduated according to rank, race and nationality. of monthly allowances payable for the subsistence of judgment-debtors.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

Subsistence-money to be costs in suit.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit :

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

Release of judgment-debtor.

341. The judgment-debtor shall be discharged from jail,

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail ; or

(b) on the decree being otherwise fully satisfied ; or

(c) at the request of the person on whose application he has been imprisoned ; or

(d) on such person omitting to pay the allowance as hereinbefore directed ; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided ; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharge under this section is not thereby discharged from his debt ; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

Imprisonment not to exceed six months.

342. No person shall be imprisoned in execution of a decree for a longer period than six months ;

When not to exceed six weeks.

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

## CHAPTER XX.

### OF INSOLVENT JUDGMENT-DEBTORS.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Power to apply for declaration of insolvency.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.



Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

**Contents of application.** 345. The application, when made by the judgment-debtor, shall set forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody ;

(b) the amount, kind and particulars of his property, and the value of any such property not consisting of money ;

(c) the place or places in which such property is to be found ;

(d) his willingness to put it at the disposal of the Court ;

(e) the amount and particulars of all pecuniary claims against him ; and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

**Subscription and verification of application.** 346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

**Service of copy of application and notice.** 347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be struck up in court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application :

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

**Power to serve other creditors.** 348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

**Powers of Court as to judgment-debtor under arrest.** 349. Where the judgment-debtor is in custody under the foregoing provisions of this Code\* the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of receiver.

351. If the Court is satisfied—

- (a) that the statements in the application are substantially true;
- (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;
- (c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property;
- (d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

352. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

Creditors to prove their debts.

Schedule to be framed.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he had died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

353. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Applications by unscheduled creditors.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

354. Every order under section 351 shall be published in the local official Gazette and every order under that section appointing a Receiver shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

Effect of order appointing Receiver.

355. The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid;

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent

Discharge of insolvent.

upon such conditions (if any) as the Court thinks fit.

Duty of Receiver.

356. The Receiver shall proceed under the direction of the Court—

(a) to convert the property into money :

(b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government :

(c) to pay the said decree-holder's costs :

(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property :

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference,

and such Receiver may retain as a remuneration for the performance of

His right to remuneration.

his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to

Delivery of surplus.

the insolvent or his legal representative :

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver ; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid ; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks

fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

**357.** An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provision of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

**358.** If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

**359.** Whenever, at the hearing under section 350, it is proved that the applicant has

[a] been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

[b] fraudulently concealed, transferred or removed any property; or

[c] committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

**360.** The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

\*A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court.

**360A.** Nothing in this Chapter shall apply to any Court having jurisdiction within the limits of the town of Calcutta, Madras or Bombay.

Inapplicability of this Chapter to Presidency-towns.

† † † † † †

\* Act VII of 1888.

† Sec. 3 of Act XIV of 1885.

## PART II.

## Of Incidental Proceedings.

## CHAPTER XXI.

## OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

No abatement by party's death, if right to sue survives.

361.\* The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

*Illustrations.*

(a). A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the right to sue survives to C, and the suit does not abate.

(b). In the same case, all the parties die before the decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c). A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(d). A, a member of a Hindu joint family under the Mitakshara law, institutes a suit for partition of the family-property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against to surviving defendant or defendants.

363.\* If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit.

364. Repealed by Act VII of 1888.

365.\* In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit.

366. If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and

Abatement where no application by representative of deceased plaintiff.

shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

*Explanation.*—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the  
Procedure in case of dispute as to representative of deceased plaintiff. suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

368. If there be more defendants than one, and any of them die  
Procedure in case of death of one of several defendants. before decree and the right to sue does not survive against the surviving defendant or defendants alone,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,  
or of sole or sole surviving defendant.

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

\* The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the

provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

**369.** The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

**370.** The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

**371.** When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

**372.** In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to or in substitution for the person from whom it has passed, as the case may require.

Power for Court to extend period of limitation prescribed for certain applications.

**372A.\*** The provisions of section 5 of the Indian Limitation Act, 1877, applicable to appeals shall apply to applications under sections 365, 366, 368 and 371.

## CHAPTER XXII.

## OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

**373.** If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

**374.** In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

**375.** If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as it dealt with by the agreement, compromise or satisfaction.

**\*375A.** Nothing in this Chapter shall apply to any application or other proceeding in any suit subsequent to the decree.

*Explanation.*—An application to the Appellate Court pending an appeal is not an application subsequent to the decree appealed from within the meaning of this section.

## CHAPTER XXIII.

## OF PAYMENT INTO COURT.

**376.** The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

**377.** Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

**378.** No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.



379. If the plaintiff accept such amount only as satisfaction in part of

Procedure where plaintiff accepts deposit as satisfaction in part.

his claim, he may prosecute his suit for the balance ; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

If the plaintiff accept such amount as satisfaction in full of his claim, he

Procedure where he accepts it as satisfaction in full.

shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

*Illustrations.*

(a) A owes B Rs. 100, B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

## CHAPTER XXIV.

### OF REQUIRING SECURITY FOR COSTS.

380. If, at the institution or at any subsequent stage of a suit, it ap-

When security for costs may be required from plaintiff at any stage of suit.

pears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant. On the application of any defendant in a suit for money in which the plaintiff is a woman the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit.

381. In the event of such security not being furnished within the time

Effect of failure to furnish security.

so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiff be permitted to withdraw therefrom under the provisions of section 373 ; or† show good cause why such time should be extended, in which case the Court may extend it.

\* Act VI of 1888.

† Act VII of 1888.

Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

The provisions of the Indian Limitation Act, 1877, with respect to an application under section 103, and of this Code with respect to an appeal from an order rejecting such an application, shall apply, so far as they can be made applicable, to an application under this section for an order to set aside the dismissal of a suit, and to an appeal from an order rejecting such an application, respectively.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

## CHAPTER XXV.

### OF COMMISSIONS.

#### *A.—Commissions to examine Witnesses.*

383. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it.

Cases in which Court may issue commission to examine witness.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Order for commission.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

When witness resides within Court's jurisdiction.

Persons for whose examination commission may issue.

386. Any Court may in any suit issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) persons who are about to leave such limits before the date on which they are required to be examined in Court ; and
- (c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or\* to any pleader or other person whom the Court issuing the commission may, subject to any rules of the High Court in this behalf, think fit to appoint.

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

**387.** When any Court to which application is made for the issue of a commission to examine witness not within British India, at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Court to examine witness pursuant to commission.

**388.** Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

**389.** After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

When depositions may be read in evidence.

**390.** Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

**391.** The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

#### *B.—Commissions for local Investigations.*

**392.** In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court:

Commission to make local investigations.

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court.

Procedure of Commissioner.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

#### *C.—Commissions to examine Accounts.*

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

Court to give Commissioner necessary instructions.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to the dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

Court to receive Commissioner's proceedings or direct further inquiry.

#### *D.—Commission to make Partition.*

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Commission to make partition of non-revenue-paying immoveable property.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

Procedure of Commissioners.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties

\* may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

### *E.—General Provisions.*

397. Before issuing any commission under this Chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into court by the party at whose instance or for whose benefit the commission is issued.

Expenses of commission to be paid into court.  
Powers of Commissioners. 398. Any Commissioner appointed under this Chapter may, unless otherwise directed by the order of appointment,

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

Attendance, examination and punishment of witnesses before Commissioner.  
For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

Court to direct parties to appear before Commissioner. 400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Procedure *ex parte*. If the parties do not so appear the Commissioner may proceed *ex parte*.

## PART III.

### Of suits in particular cases.

#### CHAPTER XXVI.

##### SUITS BY PAUPERS.

Suits may be brought in *forma pauperis*. 401. Subject to the following rules, any suit may be brought by a pauper.

*Explanation.*—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to

property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

407. If it appear to the Court.

- (a) that the applicant is not a pauper, or
  - (b) that he has within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or
  - (c) that his allegations do not show a right to sue in such Court, or
  - (d) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,
- the Court shall reject the application.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence. The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made under section 32 co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to use as a pauper.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a.) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b.) if it appears that his means are such that he ought not to continue to sue as a pauper, or
- (c.) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

Costs.

## CHAPTER XXVII.

### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

Suits by or against Secretary of State in Council.

417. Persons being *ex-officio* or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Persons authorized to act for Government.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

Plaints in suits by Secretary of State in Council.

419. The Government Pleader in any court or\* such other person as the Local Government may for any Court appoint in this behalf shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such court.

Agent for Government to receive process.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Service on public officers.

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

Extension of time to enable officer to make reference to Government.



and the Court upon such application may extend the time for so long, as appears to be requisite.

**424.** No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff \*and the relief which he claims; and the plaint must contain a statement that such notice has been so delivered or left.

Arrests in such suits.

**425.** No warrant of arrest shall be issued in such suit without in consent in writing of the District Judge.

**426.** If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

**427.** If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed, as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

**428.** In a suit against a public officer in respect of such act as aforesaid the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

**429.** When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

## CHAPTER XXVIII.

### SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

**430.** Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

When aliens may sue.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue. 431. A foreign State may sue in the Courts of British India, provided that—

[a] it has been recognized by Her Majesty or the Governor General in Council, and

[b] the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India or\* at the request of any person competent in the opinion of the Government to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

An\* appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

\* A person appointed under this section may authorise or appoint persons to make and do appearances, applications and acts in any such suit or suits as if he were himself a party to the suit or suits.

433.\* (1) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him, or

\* (b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such possession or for money charged on that property.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council, certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor General in Council may, by notification in the *Gazette of India*, authorise a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing subsections to the Governor General in Council and a Secretary to the Government of India, respectively.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

434.\* A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his state ;

Provided that in giving the consent referred to in the last foregoing section the Governor General in Council or Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

## CHAPTER XXIX.

### SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Service on Corporation or Company.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary or other principal officer of the Corporation or Company ;

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

## CHAPTER XXX.

## SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

437. In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

Joinder of executors and administrators.

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them :

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of married executrix not to join.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

## CHAPTER XXXI.

## SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

440. Every suit by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Minor must sue by next friend.  
Costs.

\*If a minor has a guardian appointed or declared by an authority competent in this behalf a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so.

Applications to be made by next friend or guardian *ad litem*.

441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

Plaint filed without next friend to be taken off file.  
Costs.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

Guardian *ad litem* to be appointed by Court.

\*Where an authority competent in this behalf as appointed or declared a guardian or guardians of the person or property or both of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it that some other person ought to be so appointed.

**444.** Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Order obtained without next friend or guardian may be discharged.  
Costs.

**445.** Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

Who may be next friend.

**446.** If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Removal of next friend.

\*If the next friend is not a guardian appointed or declared by an authority competent in this behalf and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it that the guardian ought not to be appointed the next friend of the minor.

**447.** Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Retirement of next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Application for appointment of new next friend.

Stay of proceedings on death or removal of next friend.

**448.** On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

**449.** If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Application for appointment of new next friend.

**450.** A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on coming of age.

Where he elects to proceed.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus:

"A. B., late a minor, by C. D., his next friend, but now of full age."

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Making and proving applications under sections 451, 452.

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The Costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

If the late minor be a necessary party to the suit the Court may direct him to be made a defendant.

455. If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

When suit unreasonable or improper.

Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the cost of all parties in respect of the application and of anything done in the suit.

Costs.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: Provided that he has no interest adverse to that of the minor.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

Who may be guardian *ad litem*.

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Guardian neglecting his duty may be removed.  
Costs.

Appointment in place of guardian dying *pendente lite*.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Guardian *ad litem* of minor representative of deceased judgment-debtor.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

\* 461. (1) A next friend or guardian for the suit shall not without the leave of the Court, receive any money or other moveable property on behalf of a minor either :—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or having been so appointed or declared is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Next friend or guardian *ad litem* not to compromise without leave of Court.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Application of sections 440 to 462 to persons of unsound mind.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858, or under any other law for the time being in force.

464. Nothing in this Chapter applies to a Sovereign Prince or ruling chief suing or being sued in the name of his State or being sued, by direction of the Governor General in Council or a Local Government, in the name of an agent or in any other name or shall be construed to affect or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

## CHAPTER XXXII.

### SUITS BY AND AGAINST MILITARY MEN.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer. or (b) where the officer or soldier is serving

in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this chapter the expression ‘commanding officer’ means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

468. When\* a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. *Repealed by Act XIII of 1889.*

## CHAPTER XXXIII.

### INTERPLEADER.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself :

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

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\* Act XIII of 1889.



471. In every suit of interpleader the plaintiff must, in addition to the  
 Plaintiff in such suit. other statements necessary for plaintiffs, state—

- (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;
- (b) the claims made by the defendants severally ; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court or  
 Payment of thing claim- placed in the custody of the Court, the plaintiff  
 ed into Court. must so pay or place it before he can be entitled to  
 any order in the suit.

Procedure at first hearing. 473. At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit ;
- or, if it thinks that justice or convenience so require,
- (b) retain all parties until the final disposal of the suit ;
- and, if it finds that the admissions of the parties or other evidence enable it,
- (c) adjudicate the title to the thing claimed : or else it may,
- (d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

474. Nothing in this chapter shall be taken to enable agents to sue  
 When agents and ten- their principals, or tenants to sue their landlords, for  
 ants may institute inter- the purpose of compelling them to interplead with  
 pleader-suits. any persons other than persons making claim  
 through such principals or landlords.

*Illustrations.*

(a.) A deposits a box of jewels with B as his agent. C alleges that the  
 jewels were wrongfully obtained from him by A, and claims them from B. B cannot  
 institute an interpleader-suit against A and C.

(b.) A deposits a box of jewels with B as his agent. He then writes to C  
 for the purpose of making the jewels a security for a debt due from himself to  
 C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary.  
 Both claim the jewels from B. B may institute an interpleader-suit against  
 A and C.

475. When the suit is properly instituted, the Court may provide for  
 Charge of plaintiff's the plaintiff's costs by giving him a charge on the  
 costs. thing claimed or in some other effectual way.

476. If any of the defendants in an interpleader-suit is actually suing  
 the stakeholder in respect of the subject of such  
 Procedure where defen- suit, the Court in which the suit against the stake-  
 dant is suing stakeholder. holder is pending shall, on being duly informed by  
 the Court which passed the decree in the interpleader-suit in favour of the  
 stakeholder, that such decree has been passed, stay  
 Costs. the proceedings as against him ; and his costs in the  
 suit so stayed may be provided for in such suit ; but if, and so far as, they  
 are not provided for in that suit, they may be added to his costs incurred in  
 the interpleader-suit.

## PART IV.

## Provisional Remedies.

## CHAPTER XXXIV.

## OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

*A.—Arrest before Judgment.*

When plaintiff may apply that security be taken.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

479. If the defendant fail to show such cause, the Court shall order

If defendant fail to show cause, Court may order him to make deposit or give security.

him either to deposit in court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

his obligation.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided that no person shall be detained in prison under this section after he has complied with such order.

Subsistence of defendants arrested.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

### *B.—Attachment before Judgment.*

Application before judgment for security from defendant to satisfy decree, and in default for attachment of property.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

Contents of application.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

484. If the Court, after examining the applicant and making any

Court may call on defendant to furnish security or show cause.

further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that

he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the sum, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application.

**485.** If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

**486.** The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

**487.** If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

**488.** When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

**489.** Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

**490.** Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

### *C.—Compensation for improper Arrests or Attachments.*

Compensation for obtaining arrest or attachment on insufficient grounds.

**491.** If in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

## CHAPTER XXXV.

### OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

#### *A.—Temporary Injunctions.*

Cases in which temporary injunction may be granted.

492. If in any suit it is proved by affidavit or otherwise—

[a] that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

[b] that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance, if any, to the defendant.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction, Court to direct notice to opposite party.

**495.** An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Injunction to Corporation binding on its members and officers.

Order for injunction may be discharged, varied or set aside.

**496.** Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Compensation to defendant for issue of injunction on insufficient grounds.

**497.** If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction :

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

### *B.—Interlocutory Orders.*

**498.** The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to order interim sale of perishable articles.

Power to make order for detention, &c., of subject-matter, and to authorize entry, taking of samples and experiments.

**499.** The Court may, on the application of any party to a suit, and on such terms as it thinks fit,  
(a) make an order for the detention, preservation or inspection of any property being the subject of such suit;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

Application for such orders to be after notice.

**500.** An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government-revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure in consequence is ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

## CHAPTER XXXVI.

### APPOINTMENT OF RECEIVERS.

503. Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, moveable, or immoveable, the subject of a suit, or under attachment, the Court may by order—

- (a) appoint a Receiver of such property, and, if need be,
- (b) remove the person in whose possession or custody the property may be from the possession or custody thereof ; •
- (c) commit the same to the custody or management of such Receiver ; and
- (d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, as the Court thinks fit,\* and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Receiver's liabilities. Every Receiver so appointed shall—

- (e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property ;
- (f) pass his accounts at such periods and in such form as the Court directs ;
- (g) pay the balance due from him thereon as the Court directs ; and
- (h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or re-deemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may with the consent of the Collector appoint him\* to be Receiver of such property.

When Collector may be appointed Receiver.

505. The powers conferred by this chapter shall be exercised only by High Courts and District Courts: Provided that whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

Courts empowered under this chapter.

## PART V.

### Of special Proceedings.

#### CHAPTER XXXVII.

##### REFERENCE TO ARBITRATION.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Parties to suit may apply for order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

When Court to nominate arbitrator.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

Order of reference.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

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\* Act VII of 1888.



When reference is to two arbitrators, provision shall be made in the order for a difference of opinion

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties ; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

510. If the arbitrator, or, where there are more arbitrators that one any of the arbitrators, or the umpire, dies, or refuses Death, incapacity, &c., of arbitrators or umpire. or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written Appointment of umpire by Court. notice to appoint an umpire ; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

512. Every arbitrator or umpire appointed Powers of arbitrator or umpire appointed under sections 509, 510, 511. under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it. Summoning witnesses.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court. Punishment for default, &c.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit. Extension of time for making award. Supersession of arbitration.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed he may enter on the reference in the place of the arbitrators

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

516. When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Award to be signed and filed.

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

Arbitrators or umpire may state special case.

Court may, on application, modify or correct award in certain cases.

518. The Court may, by order, modify or correct an award,

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Order as to costs of arbitration.

When award or matter referred to arbitration may be remitted.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon, such terms as it thinks fit,

(a) Where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

Grounds for setting aside award.

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or-deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

523. When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in court.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

Notice to parties to arbitration.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no ground such as is mentioned or referred to in section 520 or section 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

Filing and enforcement of such award.

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## CHAPTER XXXVIII.

### OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

[a] a sum of money fixed by the parties or to be determined by the Court, shall be paid by one of the parties to the other of them ; or

[b] some property, moveable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them ; or

[c] one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

When value of subject-matter must be stated.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

Agreement to be filed and numbered as suit.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants ; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Hearing and disposal of case.

531. The case shall be set down for hearing as a suit instituted under Chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bonâ fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

## CHAPTER XXXIX.

### OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *primâ facie* sustainable, or feels reasonable doubt as to its good faith.

*Explanation.*—This section is not confined to cases in which the bill, hundi or note sued upon, together with mere lapse of time, is sufficient to establish a *primâ facie* right to recover.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534. After decree, the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

535. In any proceeding under this chapter the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

537. Except as provided by sections 532 to 536 (both inclusive) the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

538. Sections 532 to 537 (both inclusive) apply only to—

- (a) the High Courts of Judicature at Fort William, Madras and Bombay;
- (b) the Court of the Recorder of Rangoon;
- (c) the Courts of Small Causes in Calcutta, Madras and Bombay;
- (d) the Court of the Judge of Karachi; and
- (e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may from time to time alter or cancel any such notification.

## CHAPTER XL.

### OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive trust created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust the Advocate General acting *ex officio*, or two or more persons having an

interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees under the trust ;
  - (b) vesting any property in the trustees under the trust ;
  - (c) declaring the proportions in which its objects are entitled ;
  - (d) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged ;
  - (e) settling a scheme for its management ;
- or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X of 1840, section two, is hereby repealed.

## PART VI.

### Of Appeals.

#### CHAPTER XLI.

##### OF APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from all original decrees, except when expressly prohibited, shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. An appeal may lie under this section from an original decree passed *ex-parte*.

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the appellate Court dispenses therewith) of the judgment on which it is founded.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant;

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

Rejection or amendment  
of memorandum.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

One of several plaintiffs  
or defendants may obtain  
reversal of whole decree  
if it proceed on ground  
common to all.

*Of staying and executing Decrees under Appeal.*

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the appellate Court may for sufficient cause order the execution to be stayed:

Execution of decree not  
stayed solely by reason of  
appeal.

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be staved:

Stay of execution of ap-  
pealable decree before  
time for appealing has ex-  
pired.

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

Security in case of order  
for execution of decree  
appealed against.

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.



547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

*Of Procedure in Appeal from Decrees.*

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal.

Such book shall be called the Register of Appeals.

549. The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

When appellant resides out of British India.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

\* If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution, of the decree of Appellate Court in the same manner as if he were an appellant.

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Copies of exhibits in Court whose decree appealed against.

551. (1).\* The Appellate Court, if it thinks fit, may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is made and without serving notice on the respondent or his pleader.

Power to dismiss appeal without sending notice to Lower Court.

(2). If on the day fixed under sub-section (1) or any other day to which the hearing may be adjourned the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

(3). The dismissal of an appeal under this section shall be notified to the Court against whose decree the appeal is made.

Day for hearing appeal. 552. \* Unless the Appellate Court dismisses the appeal under the last foregoing section, it shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck up in the appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare that, if he does not appear in the appellate Court on the day so fixed, the appeal will be heard *ex parte*.

#### *Procedure on Hearing.*

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

556. If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

Hearing appeal *ex parte*. If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

558. If an appeal be dismissed under section 551, sub-section (2), section 556 or section 557, the appellant may apply

Re-admission of appeal dismissed for default.

to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

559. If it appear to the Court at the hearing that any person who was

Power to adjourn hearing, and direct person appearing interested to be made respondents.

a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

560. When an appeal is heard *ex parte* in the absence of the respon-

Re-hearing on application of respondent against whom *ex parte* decree made.

dent, and judgment is given against him, he may apply to the appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

561. Any respondent, though he may not have appealed against any

Upon hearing respondent may object to decree as if he had preferred separate appeal.

part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal. \*Provided he has filed the objection in the appellate Court within one month from the date of the service on him or his pleader under section 553 of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow.

Such objection shall be in the form of a memorandum, and the pro-

Form of notice, and provisions applicable thereto.

visions of section 541, so far as they relate to the form and contents of the memorandum of appeal shall apply thereto.

\*Unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the Appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on the appellant or his pleader, at the expense of the respondent.

The provisions of Chapter XLIV shall, so far as they can be made applicable, apply to an objection under this section.

562. If the Court against whose decree the appeal is made has dis-

Remand of case by Appellate Court.

posed of the suit upon a preliminary point \* and the decree upon such preliminary point is reversed in appeal, the appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register and proceed to \*determine the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

563.\* *Repealed by Act VII of 1888.*

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.  
Limit to remand.

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may \* after resettling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.  
When evidence on record sufficient, Appellate Court shall determine case finally.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits,\* the Appellate Court may if necessary frame issues for trial, and may refer the same for trial, to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,  
When Appellate Court may frame issues and refer them for trial to Court whose decree appealed against.

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon together with the evidence,

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.  
Finding and evidence to be put on record.  
Objections to finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.  
Determination of appeal.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if  
Production of additional evidence in Appellate Court.

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced for any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.  
Mode of taking additional evidence.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Points to be defined and recorded.

*Of the Judgment in Appeal.*

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Judgment when and where pronounced.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Language of judgment.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Translation of judgment.

574. The judgment of the Appellate Court shall state—

Contents of judgment.

- (a) the points for determination;
- (b) the decision thereupon;
- (c) the reasons for the decision; and,
- (d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Date and signature.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision when appeal heard by two or more Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the Appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may from time to time make rules consistent with this Code to regulate references under this section.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

577. The judgment may be for confirming, varying or reversing the decree which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

578.\* No decree shall be reversed or substantially varied, nor shall any case be demanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

*Of the Decree in Appeal.*

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it :

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V ; and, in Chapter XXI, so far as may be, the word "plaintiff," shall be held to include a plaintiff-appellant or defendant-appellant, the word "defendant" a plaintiff-respondent or defendant-respondent, and the word "suit" an appeal, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

\* Modified by section 2 of Act VII of 1887,

† Act VII of 1888.

The provisions hereinbefore contained \*including those of section 372A shall apply to appeals under this chapter so far as such provisions are applicable.

†582A. If a memorandum of appeal or application for a review of judgment has been presented within the proper period of limitation, but is written upon paper insufficiently stamped and the insufficiency of the stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamp, the memorandum of appeal or application shall have the same effect and be as valid as if it had been properly stamped : Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake, to be fixed by the Court.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred ; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

## CHAPTER XLII.

### OF APPEALS FROM APPELLATE DECREES.

584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court, on any of the following grounds (namely) :—

(a) the decision being contrary to some specified law or usage having the force of law ;

(b) the decision having failed to determine some material issue of law or usage having the force of law ;

(c) a substantial error or defect in the procedure as prescribed by this Code of any other law, which may possibly have produced error or defect in the decision or the case upon the merits. \* An appeal may lie under this section from appellate decree passed *ex parte*.

Second appeal on no other grounds.

585. No second appeal shall lie except on the grounds mentioned in section 584.

586. No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

587. The provisions contained in Chapter XLI shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

Provisions as to second appeal.

## CHAPTER XLIII.

### OF APPEALS FROM ORDERS.

588. An appeal shall lie from the following orders under this Code, and from no other such orders :—

(1) orders under section 20, staying proceedings in a suit ;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant ;

\* Act VII of 1888.

† Act VI of 1892.

(3) orders under section 36 or section 66, directing that a party shall appear in person ;

(4) orders under section 44, adding a cause of action ;

(5) orders under section 47, excluding a cause of action ;

(6) orders returning complaints for amendment or to be presented to the proper Court ;

(7) orders under section 111, setting-off, or refusing to set-off, one debt against another ;

(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit ;

(9) orders rejecting applications under section 108, \*for an order to set aside a decree *ex parte* ;

(10) orders under sections 113, 120 and 177.

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for an execution of decrees ;

(12) orders under sections 143 and 145, directing anything to be impounded ;

(13) orders under section 162, for the attachment and sale of moveable property ;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property ;

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements ;

(16) orders under section 294, \*and orders under section 312 or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property ;

(17) orders in insolvency-matters, under section 351, section 352, section 353 or section 357 ;

(18) orders under section 366, paragraph two, section 367 or section 368 ;

(19) orders rejecting applications under section 370 for dismissal of a suit ;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit ;

(21) orders disallowing objections, under section 372 ;

(22) orders under section 454, section 455 or section 458, directing a next friend or guardian for the suit to pay costs ;

(23) orders in interpleader-suits under section 473, clause (a), (b) or (d), section 475 or section 476 ;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503 ;

(25) orders under section 514, superseding an arbitration ;

(26) orders under section 518, modifying an award ;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear an appeal ;

(28) orders under section 562, remanding a case ;

(29) † orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

\* Act VII of 1888.

† When the order is made by a Court of Small Causes an appeal therefrom shall lie to the District Court, section 24 of Act IX of 1887.



589.\* When an appeal from any \*order is allowed by this chapter, it shall lie to the Court to which an appeal would lie

What Courts to hear appeals. from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court: Provided that an appeal from an order specified in section 588, clause 17 shall lie—

†(a) to the District Court where the order was passed by a Court subordinate to that Court; and

(b) to the High Court in any other case.

590. The procedure prescribed in Chapter XLI shall, so far as may be,

Procedure in appeals from orders. apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its

No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree. original or appellate jurisdiction; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

## CHAPTER XLIV.

### OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for

Who may appeal as pauper. the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable:

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism

Proviso. shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

## CHAPTER XLV.

### OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this chapter, unless there be something repugnant in the subject or context, the expression 'decree' includes also judgment and order.

\* Decree' defined.

\* Act VII of 1888.

† See Act X of 1888.

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,

When appeals lie to Queen in Council.

an appeal shall lie to Her Majesty in Council—

[a] from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction ;

[b] from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

[c] from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

Value of subject-matter

596. In each of the cases mentioned in clauses (a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly, or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

Bar of certain appeals.

597. Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being ;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

Application to Court whose decree complained of.

598. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

599. Repealed by Act VII of 1888.

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils

Certificate as to value or fitness

the requirements of section 596, or that it is other-

wise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusal of certificate.

601. If such certificate be refused, the petition shall be dismissed :

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable,\* to the High Court to which the former Court is subordinate.

602. If the certificate be granted, the applicant shall, within six

Security and deposit re- months from the date of the decree complained of,  
quired on grant of certi- or within six weeks from the grant of the certi-  
ficate. ficate, whichever is the later date,

[a] give security for the costs of the respondent, and

[b] deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being ;

(2) papers which the parties agree to exclude ;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded :

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

Admission of appeal and  
procedure thereon.

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

(a) declare the appeal admitted, and

(b) give notice thereof to the respondent, and shall then

(c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation of accept-  
ance of security.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

605. If at any time after the admission of the appeal, but before the

Power to order further  
security or payment.

transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to com-  
ply with order.

606. If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

Refund of balance of deposit.

Powers of Court pending appeal.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

609. If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

Increase of security found inadequate.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Procedure to enforce orders of Queen in Council.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

\*In so far as the order awards costs to the respondent, it may be executed against a surety therefor, to the extent to which he has rendered himself liable in the same manner as it may be executed against the appellant.

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Appeal against order relating to execution.

Power to make rule.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section 600 ;
  - (b) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court ;
  - (c) the amount and nature of the security required under sections 602, 605 and 609 ;
  - (d) the testing of such security ;
  - (e) the estimate of the cost of transcribing the record ;
  - (f) the preparation, examination and certifying of such transcript ;
  - (g) the revision and authentication of translations ;
  - (h) the preparation of indices to transcripts of records, and of lists of the papers not included therein ;
  - (i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council,
- and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Publication of rules.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Legalization of existing rules.

614. In sections 595 and 612, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Recorder of Rangoon.

615. The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Construction of Bengal Regulation III of 1828, section 4, clause 5.

616. Nothing herein contained shall be understood—  
Saving of Her Majesty's pleasure,

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise however, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.  
and of rules for conduct of business before Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

## PART VII.

### CHAPTER XLVI.

#### OF REFERENCE TO AND REVISION BY THE HIGH COURT.

617. If before or on the hearing of a suit or an appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.  
Reference of question to High Court.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred ;  
Court may pass decree contingent upon opinion of High Court.

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.  
Judgment of High Court to be transmitted, and case disposed of accordingly.

620. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.  
Costs of reference to High Court,

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

622. \* The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.

## PART VIII.

### CHAPTER XLVII.

#### OF REVIEW OF JUDGMENT.

Application for review for judgment.

623. Any person considering himself aggrieved—  
 (a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;  
 (b) by a decree or order from which no appeal is hereby allowed; or  
 (c) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

To whom applications for review may be made.

Form of applications for review.

Application when rejected.

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

\* See sec. 11 of Act VII of 1887 on the question of Court-fees.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion :

Application when granted.

Provido. Provided that—

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for ; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation ; and

\* (c) an application made under section 624 to the Judge who delivered the judgment may, if the judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application when rejected.

628. If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority the decision shall be according to the opinion of the majority.

Order of rejection final.

Objections to admission.

629. An order of the Court for rejecting the application shall be final ; but whenever such application is admitted, the admission may be objected to on the ground that it was

[a] in contravention of the provisions of section 624,

[b] in contravention of the provisions of section 626, or

[c] after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.



No application to review an order passed on review or on an application for a review shall be entertained.

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Registry of application granted, and order for re-hearing.

## PART IX.

### CHAPTER XLVIII.

#### SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of judicature in India*).

Chapter to apply only to certain High Courts.

Application of Code to High Courts.

High Court to record judgments according to its own rules.

632. Except as provided in this chapter the provisions of this Code apply to such High Courts,

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs ;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

execution for costs subsequently.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Unauthorized persons not to address Court.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

Who may serve process of High Courts.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may from time to time by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum ;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to affect High Court in exercise of insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

639. The High Court may from time to time frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

Power to frame forms.

## PART X.

### CHAPTER XLIX.

#### MISCELLANEOUS.

Exemption of certain women from personal appearance.

appearance in Court.

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process \* in any case in which the arrest of women is not prohibited by this Code.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

The names and residences of the persons so exempted shall from time to time be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside

Lists of names of persons exempted to be kept in Courts.

\* Act VI of 1888.

within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Persons exempt from arrest under civil process. 642. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

And, except as provided in section 337 A, \* sub-section (5), and sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

643. When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200 section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476 or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstance of each case require shall be used for the respective purposes therein mentioned.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government from time to time to declare what language shall be the language of every such Court.

645A. In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

646A.\* (1). If at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2.) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

646B. (1.) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may and, if required by a party, shall submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2.) On receiving the record and statement, the High Court may pass such order in the case as it thinks fit.

(3.) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

(4.) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section.

647. The procedure herein prescribed shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

The High Court may from time to time make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

648. Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the

*Procedure when person to be arrested or property to be attached is outside district.*

Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment ; \*and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

\*Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Court of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

649. The rules contained in Chapter XIX shall apply to the execution

*Rules applicable to all civil process for arrest, sale or payment.*

of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

650. The provisions of Chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

*Application of rules as to witnesses.*

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established \*or continued by the authority of the Governor General in Council, or that the Governor General in Council, has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

651. Repealed by Act X of 1886.

652. The High Court may from time to time make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

\*A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*) may, from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure.

653. †(1) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

(2) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment.

(3) When a judgment-debtor has been committed to jail, he may be released therefrom—

(a) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be.

\* Act VII of 1888.

† Act VI of 1888.

## THE FIRST SCHEDULE.

(See section 3.)

## ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X of 1877 ...	The Code of Civil Procedure.	So much as has not been repealed.
XII of 1879 ...	Amending Act X of 1877, &c.	Sections one to one hundred and three (both inclusive).
VII of 1880 ...	Merchant Shipping ...	Section eighty-five.

## THE SECOND SCHEDULE.

(See section 5.)

*Chapters and Sections of this Code extending to Provincial Courts of Small Causes.*

PRELIMINARY : Sections 1, 2, 3 and 5.

CHAPTER	1.—Of the Jurisdiction of the Courts and <i>Res Judicata</i> , except section 11.
„	II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive.)
„	III.—Of Parties and their Appearances, Applications and Acts.
„	IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.
„	V.—Of the Institution of Suits.
„	VI.—Of the Issue and Service of Summons, except section 77.
„	VII.—Of the Appearance of the Parties and Consequence of Non-appearance.
„	VIII.—Of Written Statements and set-off.*
„	IX.—Of the examination of the Parties by the Court, except section 119.
„	X.—Of Discovery and the Admission, &c., of Documents.
„	XI.—Section 155, first paragraph, judgment where either party fails to produce his evidence.
„	XIII.—Of Adjournments.
„	XIV.—Of the Summoning and attendance of witnesses.
„	XV.—Of the Hearing of the suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).
„	XVI*.—Of Affidavits.
„	XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.
„	XVIII.—Sections 220, 221 and 222, of costs.
„	XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive.)

\* Section 26 of Act IX of 1887.

THE SECOND SCHEDULE,—*Concluded.*

CHAPTER	XX.—Section 360, power to invest certain Courts with Insolvency-jurisdiction.
„	XXI.—Of the Death, Marriage and Insolvency of Parties.
„	XXII.—Of the Withdrawal and Adjustment of suits.
„	XXIII.—Of payment into Court.
„	XXIV.—Of requiring Security for Costs.
„	XXV.—Of Commissions.
„	XXVI.—Suits by Paupers.
„	XXVII.—Suits by and against Government or Government servants.
„	XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.
„	XXIX.—Suits by and against Corporations and Companies.
„	XXX.—Suits by and against Trustees, Executors and Administrators.
„	XXXI.—Suits by and against Minors and Persons of unsound mind.
„	XXXII.—Suits by and against Military Men.
„	XXXIII.—Interpleader.
„	XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.
„	XXXVI.—Appointment of receivers.
„	XXXVII.—Reference to Arbitration, sections 506 to 526 (both inclusive).
„	XXXVIII.—Of Proceedings on Agreement of Parties.
„	XLVI.—Reference to and Revision by High Court.
„	XLVII.—Of Review of Judgment, sections 623, 626 and 630.*
„	XLIX.—Miscellaneous.*

## THE THIRD SCHEDULE.

(See section 7.)

*Bombay Enactments.*

Bombay Regulations	XXIX, 1827.
„	VII, 1830.
„	I, 1831.
„	XVI, 1831.
Act	XIX of 1835.
„	XIII of 1842.

## THE FOURTH SCHEDULE.

(See section 644).

## FORMS OF PLEADINGS AND DECREES.

## A.—PLAINTS PART 1.

## No. 1.

## FOR MONEY LENT.

IN THE COURT OF \_\_\_\_\_, AT  
*Civil Suit No.*

A. B. of  
*against*  
C. D. of

A. B., the above-named plaintiff, states as follows :—

I. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, he lent the defendant \_\_\_\_\_ rupees repayable on demand [or on the \_\_\_\_\_ day of \_\_\_\_\_].

\* Section 26 Act IX of 1887.



THE FOURTH SCHEDULE—*continued.*

2. That the defendant has not paid the same, except rupees paid on the day of 18 .  
 [If the plaintiff claims exemption from any law of limitation, say :—  
 3. The plaintiff was a minor [or insane] from the day of till the day of .  
 4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .  
 [NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

## No. 2.

## FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B and G. H., the above-named plaintiffs, state as follows :—

1. That on the day of 18 , at , the defendant received rupees [or a cheque on the Bank for rupees] from one E. F. for the use of the plaintiffs.
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

## No. 3.

## FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he and E. F., since deceased, delivered to the defendant [one thousand barrels of flour, five hundred maunds of rice, or as the case may be] for sale upon commission.
2. That on the day of 18 , [or, on some day unknown to the plaintiff, before the day of 18 ], the defendant sold the said merchandise for rupees.
3. That the commission and expenses of the defendant thereon amount to rupees.
4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. That he has not paid the same.  
 [Demand of judgment].

## No. 4.

## FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.
2. That the plaintiff procured the said bars, to be assayed by one E. F., who was paid by the defendant for such assay, and that the said E. F. declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Rs. annas therefor.
3. That each of the said bars did contain only 1,200 tolas of fine silver.
4. That the defendant has not repaid the sum so overpaid.  
 [Demand of judgment].

THE FOURTH SCHEDULE,—*Continued.*

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs].

## No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , at the request [or by the authority] of the defendant, the plaintiff paid to one E. F.       rupees.
2. That, in consideration thereof, the defendant promised [or became bound] to pay the same to the plaintiff on demand [or as the case may be].
3. That [on the       day of       18       , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[Demand of judgment].

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication].

## No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , E. F., of       , deceased sold and delivered to the defendant [one hundred barrels of flour, or, the goods mentioned in the schedule hereto annexed, or, sundry goods].
2. That the defendant promised to pay       rupees for the said goods on delivery [or, on the       day of       some day before the plaint was filed].
3. That he has not paid the same.
4. That the said E. F., in his lifetime made his will, whereby he appointed the plaintiff executor thereof.
5. That on the       day of       18       , the said E. F. died.
6. That on the       day of       probate of the said will was granted to the plaintiff by the Court of       .
7. The plaintiff as executor as aforesaid [Demand of judgment].

[NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest].

## No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , plaintiff sold and delivered to the defendant [sundry articles of house-furniture] but no express agreement was made as to the price.
2. That the same were reasonably worth       rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth].

THE FOURTH SCHEDULE,—*Continued.*

## No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , plaintiff sold to the defendant [one hundred barrels of flour] and, at the request of the defendant, delivered the same to one E. F.
2. That the defendant promised to pay to the plaintiff            rupees therefor.
3. That he has not paid the same.

[Demand of judgment.]

## No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , plaintiff furnished to [Mary Jones] the wife of [James Jones] deceased, at her request, sundry articles of [food and clothing], but no express agreement was made as to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth            rupees.
4. That the said James Jones refused to pay the same.
5. That the defendant is the executor of the last Will of the said James Jones.

[Demand of judgment].

## No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the plaintiff sold to E. F., of            , deceased, [all the crops then growing on his farm in            .]
2. That the said E. F. promised to pay the plaintiff            rupees for the same.
3. That he did not pay the same.
4. That the defendant is administrator of the estate of the said E. F.

[Demand of judgment.]

## No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , E. F., of            , sold to the defendant [all the fruit growing in his orchard in            ], but no express agreement was made as to the price.
2. That the same was reasonably worth            rupees.
3. That the defendant has not paid the same.

THE FOURTH SCHEDULE—*continued.*

4. That on the       day of       the High Court<sup>t</sup> of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5. The plaintiff as committee as aforesaid [*Demand of judgment.*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following :—]

4. That on the       day of       the Civil Court of       duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff Manager of his estate.

5. The plaintiff as Manager as aforesaid.

[*Demand of judgment.*]

## No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , *E. F.*, of       agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon delivery thereof rupees.

2. That the plaintiff made the said goods, and on the       day of       18       , offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.

3. That the said *E. F.* has not accepted the said goods or paid for the same.

4. That on the       day of       18       , the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.

5. The plaintiff prays judgment for       rupees with interest from the day of       , at the rate of       per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

## No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of       rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the       day of       18       , at       , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for       rupees.

6. That the expenses attendant upon such re-sale amounted to       rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods ; see Act IX of 1872, section 93].

## No. 14.

## FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the plaintiff sold [and conveyed] to the defendant [the house and compound No.       , in the city of       or, a farm known as       , in       or, a piece of land lying, &c.]
2. That the defendant promised to pay the plaintiff       rupees for the said [house and compound, or farm, or land.]
3. That he has not paid the same.

[Demand of judgment.]

[NOTE.—Where there has been no actual conveyance, say, in § 1, “sold to the defendant the house, &c., and placed him in possession of the same.”]

## No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE SOLD.  
BUT NOT CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No.       , in the town of       , or one hundred bighas of land in       , bounded by the East Indian railroad, and by other lands of the plaintiff] for       rupees.
2. That on the       day of       18       , at       , the plaintiff tendered [or, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.
3. That the defendant has not paid the said sum.

[Demand of judgment.]

## No. 16.

## FOR SERVICES AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant [hired plaintiff as a clerk, at the salary of       rupees per year.]
2. That from the [said day] until the       day of       18       , the plaintiff served the defendant as his [clerk].
3. That the defendant has not paid the said salary.

[Demand of judgment.]

THE FOURTH SCHEDULE,—*Continued.*

## No. 17.

## FOR SERVICES AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That between the       day of       18       , and the       day of       18       , at       , plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request ; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth       rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 18.

## FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , plaintiff [furnished the paper for and printed one thousand copies of a book called       ] for the defendant, at his request, [and delivered the same to him.]

2. That the defendant promised to pay       rupees therefor.

3. That he has not paid the same.

[Demand of judgment.]

## No. 19.

## FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , plaintiff built a house [known as No.       , in       ], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.

2. That the said work and materials were reasonably worth       rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 20.

## FOR RENT RESERVED IN A LEASE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[Or state the substance of the contract.]

2. That the defendant has not paid the rent of the [month] ending on the day of       18       amounting to       rupees.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.**Another form.*

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years to hold from the day of 18, at rupees a year, payable quarterly.

2. That of such rent quarters are due and unpaid.

[*Demand of judgment.*]

## No. 21.

## FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant hired from the plaintiff [the house No. , street], at the rent of rupees, payable on the first day of .

2. That the defendant occupied the said premises from the day of 18, to the day of 18 .

3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[*Demand of judgment.*]

## No. 22.

## FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows :—

1. That the defendant occupied the [house No. , street], by permission of the said X. Y., from the day of 18, until the day of 18, and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. That the defendant has not paid the same.

4. The plaintiff as such executor as aforesaid pays judgment for rupees.

## No. 23.

## FOR BOARD AND LODGING.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18, until the day of 18, the defendant occupied certain rooms in the house [No. , street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessities.

2. That, in consideration thereof, the defendant promised to pay [or That no agreement was made as to payment for such meat, drink, attendance or necessities, but the same were reasonably worth] the sum of rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

## No. 24.

## FOR FREIGHT OF GOODS.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of        18        , at        , plaintiff transported in [his barge, *or otherwise*] [one thousand barrels of flour, *or sundry goods*], from to        , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [*or*, That no agreement was made as to payment for such transportation, but such transportation was reasonably worth        rupees.]

3. That the defendant has not paid the same.

[*Demand of judgment.*]

## No. 25.

## FOR PASSAGE-MONEY.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of        18        , plaintiff conveyed the defendant [in his ship, called the        ], from        to        at his request.

2. That the defendant promised to pay the plaintiff        rupees therefor, [*or*, That no agreement was made as to the price of the said passage, but the said passage was reasonably worth        rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

## No. 26.

## ON AN AWARD.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of        18        , at        , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of E. F. and G. H., as arbitrators [*or*, entered into an agreement, a copy of which is hereto annexed].

2. That on the            day of        18        , at        , the said arbitrators awarded that the defendant should [pay the plaintiff        rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[*NOTE.*—This will apply where the agreement to refer is not filed in court].

## No. 27.

## ON A FOREIGN JUDGMENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of        18        , at        , in the State [*or Kingdom*] of        the        Court of that State [*or Kingdom*], in a suit therein pending



THE FOURTH SCHEDULE,—*continued.*

between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff                rupees, with interest from the said date.

2. That the defendant has not paid the same.

[*Demand of judgment.*]

## PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

## .        No. 28.

## ON AN ANNUITY BOND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the        day of        18        , at        , the defendant by his bond became bound to the plaintiff in the sum of        rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff        rupees half-yearly on the        day of        and the        day of        in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the        day of        18        , the sum of        rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[*Demand of judgment* ]

## No. 29.

## PAYEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the        day of        18        , at        , the defendant, by his promissory note now overdue, promised to pay to the plaintiff        rupees        [days] after date.

2. That he has not paid the same [except        rupees, paid on the        day of        18        .]

[*Demand of judgment.*]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute :—]

1. That on the        day of        18        , at        , the defendant by his promissory note promised to pay to the plaintiff        rupees        months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same        months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the        day of        18        , at        , the defendant by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. & Co.'s, Madras]        rupees        months after date.

2. That the said note was duly presented for payment [at Messrs. A & Co.'s] aforesaid, but has not been paid.

THE FOURTH SCHEDULE—*continued.**Written Statement of the Defendant.*

IN THE COURT, &amp;c.

*C. D.*, the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances : The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books and inquire into the state of the partnership-assets and liabilities ; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000 and that the liabilities of the firm were less than Rs. 30,000 whereas the fact was that the assets of the firm were less than 50,000 and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

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 No. 30.

## FIRST INDORSEE AGAINST MAKER.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That on the        day of        18        at        , the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* [or to *E. F.* or order] rupees [        days after date].

2. That the said *E. F.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

*[Demand of judgment.]*


---

 No. 31.

## SUBSEQUENT INDORSEE AGAINST MAKER.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. [As in the last preceding form.]

2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [or and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

*[Demand of judgment.]*


---

 No. 32.

## FIRST INDORSEE AGAINST FIRST INDORSEER.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. That *E. F.*, on the        day of        18        , at        , by his promissory note, now overdue, promised to pay to the defendant or order        rupees        months after date.

THE FOURTH SCHEDULE—*continued*.

2. That the defendant indorsed the same to the plaintiff.
3. That on the            day of            18            , the same was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.
5. That he has not paid the same.

[*Demand of judgment.*]

## No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT BEING SPECIAL.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one E. F. a promissory note, now overdue made [*or purporting to have been made*] by one G. H., on the            day of            18            , at            , to the order of the defendant, for the sum of            rupees [payable            days after date.]
2. That the same was, by the indorsement of the said E. F. [and others, transferred to the plaintiff. [*or That the said E. F. indorsed the same to the plaintiff.*]
- 3, 4 and 5. [*Same as 3, 4 and 5 of the last preceding form.*]

[*Demand of judgment.*]

## No. 34.

SUBSEQUENT INDORSEEA GAINST HIS IMMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or purporting to have been made*] by one E. F., on the            day of            18            , at            , to the order of one G. H., for the sum of            rupees [payable            days after date], and indorsed by the said G. H. to the defendant.
- 2, 3 and 4. [*Same as in 3, 4 and 5 in Form No. 33.*]

[*Demand of judgment.*]

## No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That a promissory note, now overdue, made [*or purporting to have been made*] by one E. F., on the            day of            18            , at            , to the order of one G. H., for the sum of            rupees [payable            days after date], and indorsed by the said G. H. to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.
- 2, 3 and 4. [*As in No. 33.*]

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

## No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, AND FIRST AND SECOND INDORSER.  
IN THE COURT OF AT

• *Civil Suit No.*

A. B. of  
against  
C. D. of  
E. F. of  
and  
G. H. of

A. B., the above-named plaintiff, states as follows :—

1. That on the        day of        18        , at        , the defendant, C. D., by his promissory note, now overdue, promised to pay to the order of the defendant, E. F., rupees [        months after date.]
2. That the said E. F. indorsed the same to the defendant, G. H., who indorsed it to the plaintiff.
3. That on the        day of        18        , the same was presented [*or state facts excusing want of presentment*] to the said C. D. for payment, but was not paid.
4. That the said E. F. and G. H. had notice thereof.
5. That they have not paid the same.

[*Demand of judgment.*]

## • No. 37.

DRAWER AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the        day of        18        , at        , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him        rupees [        days after date, *or sight, thereof*].
2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to E. F. or order        rupees        months after date.
2. That the plaintiff delivered the said bill to the said E. F. on        .
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

THE FOURTH SCHEDULE—*continued.*

No. 38.

## PAYEE AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the       day of       18       , at       , requiring the defendant to pay to the plaintiff       rupees       after sight thereof.
2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

## FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the       day of       18       , at       , requiring the defendant to pay to the order of one *G. H.*       rupees       after sight thereof.
2. That the said *G. H.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 40.

## SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. [*As in the last preceding form, to the end of article 1.*]
2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 41.

## PAYEE AGAINST DRAWER FOR NON ACCEPTANCE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff       rupees [       days after sight.]
2. That on the       day of       18       , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued*.

No. 42.

## FIRST INDORSEE AGAINST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one E. F., on the      day of 18      , at      , requiring one G. H. to pay to the order of the defendant      rupees [days] after sight [*or* at sight] thereof, [and accepted by the said G. H. on the day of 18      ].
2. That on the      day of 18      , the same was presented to the said G. H. for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 43.

## SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one E. F. a bill of exchange, now overdue, made [*or* purporting to have been made] by one G. H., on the      day of 18      , at      , requiring one I. J. to pay to the order of the defendant      rupees      days after sight thereof [*or otherwise*], and accepted by the said I. J. on the day of 18      . [*This clause may be omitted if not according to the fact.*]
2. That the same was, by the indorsement of the said E. F. [and others], transferred to the plaintiff.
3. That on the      day of 18      the same was presented to the said I. J. for payment, and was dishonoured.
4. That the defendant had due notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

No. 44.

## SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one E. F., on the      day of 18      , at      , requiring one G. H. to pay to the order of I. J.      rupees      days after sight thereof [*or otherwise*], [accepted by the said G. H.] and indorsed by the said I. J. to the defendant.
2. That on the      day of 18      , the same was presented to the said G. H. for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 45.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [*or purporting to have been made*] by one *E. F.*, on the       day of       18       , at       , requiring one *G. H.* to pay to the order of one *I. J.*       rupees       days after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.
2. That on the       day of       18       , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 46.

## INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF

, AT

*Civil Suit No.*

*A. B.* of  
*against*  
*C. D.* of  
*E. F.* of  
*and*  
*G. H.* of

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant *C. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said *E. F.* to pay to the order of the defendant *G. H.*       rupees [       days after sight thereof.]
2. That on the       day of       18       , the said *E. F.* accepted the same.
3. That the said *G. H.* indorsed the same to the plaintiff.
4. That on the       day of       18       , the same was presented to the said *E. F.* for payment, and was dishonoured.
5. That the other defendants had due notice thereof.
6. That they have not paid the same.

[Demand of judgment.]

No. 47.

## PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London]       pounds sterling, [sixty days] after sight thereof.

THE FOURTH SCHEDULE—*continued.*

2. That on the            day of            18            , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of            pounds sterling, at the time of the service of notice of protest on the defendant, was            rupees            annas.]

Wherefore the plaintiff demands judgment against the defendant for            rupees, with [ten per centum] compensation and interest from the            day of            18            .

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No. 48.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff            rupees after date [or            days after sight] thereof.

2. That on the            day of            18            , the defendant accepted the said bill.

3. That he has not paid the same.

[*Demand of judgment.*]

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No. 49.

ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &c.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff was the owner of [or had an interest in] the ship            at the time of her loss, as hereinafter mentioned.

2. That on the            day of            18            , at            , the defendants, in consideration of            rupees to them paid [or which the plaintiff then promised to pay] executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [or, whereby they promised to pay to the plaintiff, within            days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from            to            , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding            rupees].

3. That the ship, while proceeding on the voyage mentioned in the said policy, was on the            day of            18            , totally lost by the perils of the sea [or otherwise].

4. That the plaintiff's loss thereby was            rupees.

5. That on the            day of            18            , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]



THE FOURTH SCHEDULE—*continued*.

No. 50.

ON CARGO, LOST BY FIRE :—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18, at the defendants, in consideration of rupees which the plaintiff then paid [or promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed ; [or, whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18, at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire [or, as the case may be].

4. 5 and 6. [As in paragraphs 4, 5 and 6 of the last preceding form].

[Demand of judgment.]

No. 51.

ON FREIGHT :—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to , at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18, at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [or state its tenor, as before].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18, totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [As in Form No. 49.]

[Demand of judgment.]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] shipped on board a vessel called the Y. Z., from to , at the time of the loss hereafter mentioned.

2. That on the day of 18, at , in consideration of rupees [which the plaintiff then promised to pay,] the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [or state its tenor, as before].

THE FOURTH SCHEDULE,—*Continued.*

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 53.

## FOR A PARTICULAR AVERAGE LOSS.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1 and 2. [*As in the last preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [*As in paragraphs 5 and 6 of the last preceding form,*]

[*Demand of judgment.*]

No. 54.

## ON A FIRE-INSURANCE POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff [was the owner of, or] had an interest in a [dwelling-house, known as No. , street, in the city of ,] at the time of its destruction [or, injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [or, greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 55.

## AGAINST SURETY FOR PAYMENT OF RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one E. F. hired from the plaintiff, for the term of years, the [house No. , street ,] at the annual rent of rupees, payable [monthly.]

THE FOURTH SCHEDULE—*continued.*

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add :—*]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

## B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

## No. 56.

## FOR BREACH OF AGREEMENT TO CONVEY LAND.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or, That on, &c.*, the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of [the house No. , street, in the city of , free from all incumbrances ; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof].

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant [or, That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part.]

3. That the defendant has not executed any conveyance of the said property to the plaintiff [or, That there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, or any other defect of title.]

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

## No. 57.

## FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is thereto annexed.

[*Or, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees.*]

THE FOURTH SCHEDULE,—*continued.*

2. That on the       day of       18       , at       , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument,] on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 58.

*Another Form.*

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That by an agreement dated the       day of       18       , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of       rupees, upon the terms and conditions following (that is to say)—

(a) That the defendant should pay the plaintiff a deposit of       rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the       day of       18       , on which day the said purchase should be completed.       t

(b) That the plaintiff should deduce and make good title to the said premises on or before the       day of       18       , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[*Demand of judgment.*]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the       day of       18       ], and that the plaintiff should pay therefor       rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an account, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his service            rupees [monthly].

2. That on the            day of            18            , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the            day of            18            , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

*[Demand of judgment.]*

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. *[As in last preceding Form.]*

2. That on the            day of            18            , at            , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

*[Demand of judgment.]*

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of            rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the            day of            18            , offered so to do].

3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the            day of            18            , he refused to serve the plaintiff as aforesaid.

*[Demand of judgment.]*

THE FOURTH SCHEDULE—*continued.*

## No. 63.

## AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[*Or state the tenor of the contract.*]

[2. That the plaintiff duly performed all the conditions of the said agreement on his part.]

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner.]

[*Demand of judgment.*]

## No. 64.

## BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant entered into an agreement, under his hand and seal,\* a copy of which is hereto annexed.

[*Or state the tenor of the contract.*]

2. That after the making of the said agreement the plaintiff received the said [apprentice] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the       day of       18       , the said [apprentice] wilfully absented himself from the service of the plaintiff, and continues so to do.

[*Demand of judgment*]

## No. 65.

## BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant entered into an agreement with the plaintiff and his (father) E. F., under their hands and sales, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not instructed the plaintiff in the business of       .  
(*or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment.*)

[*Demand of judgment.*]

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\* The form given in Act XIX of 1850 requires the seal of the father or guardian.

THE FOURTH SCHEDULE—*continued.*

## No. 66.

## ON A BOND FOR THE FIDELITY OF A CLERK.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , plaintiff employed one E. F. as a clerk.

2. That on the            day of            18            , at            , the defendant agreed with the plaintiff, that if the said E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding            rupees.

[Or, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of            rupees, conditioned that if the said E. F., should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise].

[Or, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed].

3. That between the            day of            18            , and the            day of            18            , the said E. F. received money and other property, amounting to the value of            rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[Demand of judgment.]

## No. 67.

## BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the defendant, by an instrument in writing, let to the plaintiff [the house No.            , street], for the term of            years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the            day of            during the said term, one E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend            rupees in moving, and lost the custom of G. H. and I. J. by such removal].

[Demand of judgment.]

## No. 68.

## FOR BREACH OF WARRANTY OF MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

That on the            day of            18            , at            , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him            rupees therefor.

THE FOURTH SCHEDULE,—*Continued.*

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

## No. 69.

## ON AN AGREEMENT OF INDEMNITY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the plaintiff and defendant, being partners in trade under the firm of A. B. & C. D., dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the       day of       18       , [a judgment was recovered against the plaintiff and defendant by one E. F., in the High Court of Judicature at       , upon a debt due from the said firm to the said E. F., and on the       day of       18       ,] the plaintiff paid       rupees [in satisfaction of the same.]

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

## No. 70.

## BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[Or, 1. That on       , at       , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship       at       on the       day of       18       , five hundred tons of merchandise, which she should carry to       , and there deliver, on payment of       freight; and that the defendant should have       days for loading,       days for discharge, and       days for demurrage, if required, at       rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, or, the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for       rupees for demurrage and       rupees additional for compensation.

## C.—PLAINTS FOR COMPENSATION UPON WRONGS.

## No. 71.

## FOR TRESPASS ON LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

That on the       day of       18       , at       , the defendant entered upon certain land of the plaintiff, known as       [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same.]

[*Demand of judgment.*]



THE FOURTH SCHEDULE—*continued.*

No. 72.

## FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant entered a dwelling-house of the plaintiff called \_\_\_\_\_, and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

No. 73.

## FOR TRESPASS ON MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [or, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, *or as the case may be*, and carried away the same and disposed of them to his own use]:

or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at \_\_\_\_\_ fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [*otherwise, state the injury according to the facts.*]

[Demand of judgment.]

No. 74.

## FOR THE CONVERSION OF MOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff states as follows :—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, plaintiff was in possession of certain goods described in the schedule hereto annexed [or, of one thousand barrels of flour].

2. That on that day, at \_\_\_\_\_, the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

(Demand of judgment.)

The Schedule.

THE FOURTH SCHEDULE—*continued*.

## No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant, in consideration of the payment to him of       rupees [*or*,       rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3. That on the       day of       18       , the plaintiff requested the defendant to deliver the said goods, and tendered him       rupees [*or* the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said good to E. F. and the same are lost to the plaintiff.

[*Demand of judgment.*]

## No. 76.

FOR PROCURING PROPERTY BY FRAUD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth       rupees over all his liabilities.]

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of       rupees.

3. That the said representations were false [*or, state the particular falsehoods*], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or, if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended       rupees.*]

[*Demand of judgment.*]

## No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant represented to the plaintiff that one E. F., was solvent and in good credit, and worth       rupees over all his liabilities [*or, that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit*].

2. That the plaintiff was thereby induced to sell to the said E. F. (rice) of the value of       rupees [on       month's credit].

3. That the said representations were false or were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or, to deceive and injure the plaintiff*].

4. That the said E. F., [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 78.

FOR POLLUTING THE WATER UNDER PLAINTIFF'S LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called \_\_\_\_\_ and situate in \_\_\_\_\_, and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[Demand of judgment.]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called \_\_\_\_\_ situate in \_\_\_\_\_.

2. That ever since the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]

No. 80.

FOR OBSTRUCTING A WAY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or, on foot] at all times of the year.

THE FOURTH SCHEDULE,—*continued.*

3. That on the       day of       18       , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or, on foot, or, in any manner] along the said way [and has ever since wrongfully obstructed the same.]

4. [State special damage, if any.]

[Demand of judgment.]

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*Another Form.*

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from       to       so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or, into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

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## No. 81.

## FOR DIVERTING A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was possessed of a mill situated on a [stream] known as the       , in the village of       , district of       .

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the       day of       18       , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof, the plaintiff has been unable to grind more than       sacks per day, whereas, before the said diversion of water, he was able to grind       sacks per day.

[Demand of judgment.]

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## No. 82.

## FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c. and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the       day of       18       , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

No. 83.

FOR WASTE BY A LESSEE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

No. 1. That on the       day of       18       , the defendant hired from him [the house street] for the term of       .

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors ; or otherwise specify the injuries as far as possible.]

The plaintiff prays judgment for       rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

That on the       day of       18       , at       , the defendant assaulted and beat him       .

The plaintiff prays judgment for       rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE,

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay       rupees for medical attendance, and has been ever since disabled [from using his right arm], [*Or otherwise state the damage, as the case may be.*]

[Demand of judgment.]

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , at       , the defendant assaulted the plaintiff and imprisoned him for       days [or hours] ; [*state special damage, if any thus :—*]

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be.*]

[Demand of judgment.]

THE FOURTH SCHEDULE—*continued.*

## No. 87.

## FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , the defendants were common carriers of passengers by railway between       and       .

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at       [or, near the station of       ; or, between the stations of       and       ], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

*[Demand of judgment.]*

[Or thus :—2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby. &c., as in § 3.] •

## No. 88.

## FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoemaker, carrying on business at       . The defendant is a merchant of       .

2. On the [23rd May, 1875], the plaintiff was walking eastward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof of the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims       rupees damages.

*(Title.)**Written Statement of Defendant.*

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. E. F. and G. H.] of       Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. E. F. and G. H.]

THE FOURTH SCHEDULE—*continued.*

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

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 No. 89.

FOR LIBEL ; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [or, in a letter addressed to E. F.], the following words concerning the plaintiff :—

[Set forth the words used.]

2. That the said publication was false and malicious.

[Demand of judgment.]

Note.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus :—“Which said words, being translated into the . language, have the meaning and effect following and were so understood by the persons to whom they were so published, that is to say [*here set out a literal translation of the libel in the language of the Court.*]

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 No. 90.

FOR LIBEL ; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of

2. That on the day of 18 , at , the defendant published in a newspaper, called the [or, in a letter addressed to E. F., or otherwise how published], the following words concerning the plaintiff :—

[“A. B. of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address.”]

3. That the defendant meant thereby that [the plaintiff has absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false a malicious.

[Demand of judgment.]

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 No. 91.

FOR SLANDER ; THE WORDS BEING ACTIONABLE IN THEMSELVES,

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant falsely and maliciously spoke, in the hearing of E. F. [or, sundry persons], the following words concerning the plaintiff : [“He is a thief.”]

THE FOURTH SCHEDULE,—*continued.*

2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of

[*Demand of judgment.*]

No. 92.

FOR SLANDER ; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant falsely and maliciously said to one E. F. concerning the plaintiff : [“ He is a young man of remarkably easy conscience.”]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said E. F., refused to employ the plaintiff as a clerk.]

[*Demand of judgment.*]

No. 93.

FOR MALICIOUS PROSECUTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a magistrate of the said city, or, as the case may be] on a charge of ; and the plaintiff was arrested thereon, and imprisoned for or hours, and gave bail in the sum of rupees to obtain his release].

2. That in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; or, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F., or, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*Demand of judgment.*]

## D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That X. Y. was the absolute owner [of the estate, or, the share of the estate, called , situate in the district of , the Government-revenue of which is rupees and the estimated value rupees, or, of the house No. , street in the town of Calcutta, the estimated value of which is rupee ].



THE FOURTH SCHEDULE—*continued*.

2. That on the      day of      18      , Z. illegally dispossessed the said X. Y. of the said estate [or share or house].

3. That the said X. Y. has since died intestate, leaving the plaintiff, the said A. B., his heir him surviving.

4. That the defendant withholds the possession of the estate [or share or house] from the plaintiff.

The plaintiff prays judgment :

- (1) for the possession of the said premises ,
- (2) for      rupees compensation for withholding the same.

*Another Form.*

A. B., the above-named plaintiff, states as follows :—

1. On the      day of      , the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the      ] for a term of five years from the      day of      , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the      day of      18      , a month's rent became due, and on the day of      18      , another month's rent became due ; on the      day of      18      , both had been in arrear for twenty-one days, and both are still due.

5. On the same      day of      18      , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims,

- (1) possession of the said house and premises ;
- (2)      rupees for arrears of rent ;
- (3)      rupees compensation for the defendant's breach of his covenant to repair ;
- (4)      rupees for the occupation of the house and premises from the      day of      18      , to the day of recovering possession.

No. 95.

BY THE TENANT.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. That one E. F. is the absolute owner of [a piece of land in the town of Calcutta      , bounded as follows :      ], the estimated value of which is rupees      .

2. That on the      day of      18      , the said E. F., let the said premises to the plaintiff for      years, from      .

3. That the defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

THE FOURTH SCHEDULE,—*continued.*

## No. 96.

## FOR MOVEABLE PROPERTY WRONGFULLY TAKEN.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [or was possessed of] one hundred barrels of flour, the estimated value of which is rupees.

2 That on that day, at , the defendant took the same.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

## No. 97.

## FOR MOVEABLES WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [or, *state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [or *describe the goods*], the estimated value of which is rupees.

2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had :

(2) for rupees compensation for the detention thereof.

*The schedule.*

## No. 98.

## AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFeree WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [C. D.], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said C. D. [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said C. D. to be so. [Or, That at the time of making the said representations, the said C. D. was insolvent, and knew himself to be so.]

4. That the said C. D. afterwards transferred the said goods to the defendant E. F. without consideration [or who had notice of the falsity of the representation].

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

THE FOURTH SCHEDULE—*continued.*

## E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

## No. 99.

## FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That on the       day of       18       , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at       , contained [ten bighas.]

2. That the plaintiff was thereby induced to purchase the same at the price of       rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the       day of       18       , the plaintiff paid the defendant       rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighas.]

The plaintiff prays judgment,

(1) for       rupees, with interest from the       day of       18       ;

(2) that the said agreement of purchase be delivered up and cancelled.

## No. 100.

## FOR AN INJUNCTION RESTRAINING WASTE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is the absolute owner of [*describe the property.*]

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment, that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed.*]

## No. 101.

## FOR ABATEMENT OF A NUISANCE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No.       street, Calcutta].

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street       ].

3. That on the       day of       18       , the defendant erected upon his said plot a slaughter-house, and still maintains the same ; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].

The plaintiff prays judgment, that the said nuisance be abated.

THE FOURTH SCHEDULE—*Continued.*

## No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

*As in Form No. 81.*

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

## No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY, THREATENED WITH DESTRUCTION,  
AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter], and of which no duplicate exists [*or, state any facts showing that the property is of a kind that cannot be replaced by money*].

2. That on the        day of        18        , he deposited the same for safe keeping with the defendant.

3. That on the        day of        18        , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting] ;

The plaintiff prays judgment :

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said (painting) ;

(2) that he return the same to the plaintiff.

## No. 104.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That before the date of the claims hereinafter mentioned, one G. H. deposited with the plaintiff [*describe the property*] for (safe keeping).

2. That the defendant, C. D., claims the same (under an alleged assignment thereof to him from the said G. H.)

3. That the defendant, E. F., also claims the same (under an order of the said G. H. transferring the same to him.)

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;

(2) that they be required to interplead together concerning their claims to the said property ;

THE FOURTH SCHEDULE—*Continued.*

[3] that some person be authorized to receive the said property pending such litigation:]

(4) that upon delivering the same to such (person), the plaintiff be discharged from all liability to either of the defendants in relating thereto.

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No. 105.

## ADMINISTRATION BY CREDITOR.

(Title)

A. B., the above-named plaintiff, states as follows :—

1. E. F., late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of (*here insert nature of debt and security, if any*).

2. The said E. F. made his will, dated the day of , and thereof appointed C. D. executor [*or, devised his estate in trust, &c., or, died intestate, as the case may be*].

3. The said will was proved by the said C. D. (*or, Letters of administration were granted, &c.*)

4. The defendant has possessed himself of the moveable (and immoveable, *or, the proceeds of the immoveable*) property the said E. F. and has not paid the plaintiff his said debt.

5. The said E. F. died on or about the day of .

6. The plaintiff prays that an account may be taken of the moveable (and immoveable) property of the said E. F., deceased, and that the same may be administered under the decrees of the Court.

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No. 106.

## ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[Alter Form No. 105 thus :—]

[*Omit paragraph 1 and commence paragraph 2*] E. F., late of , duly made his last will, dated the day of and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff (*here state the specific legacy.*)

*For paragraph 4 substitute—*

The defendant is in possession of the moveable property of the said E. F., and, amongst other things, of the said (*here name the subject of the specific bequest.*)

*For the commencement of paragraph 6 substitute—*

The plaintiff prays that the defendant may be ordered to deliver to him the said (*here name the subject of the specific bequest*) or that, &c.,

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No. 107.

## ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

(Alter Form No. 105 thus :—)

(*Omit paragraph 1 and substitute for paragraph 2*) E. F., late of , duly made his last will, dated the day of ; and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff a legacy of rupees.

*In paragraph 4, substitute "legacy" for "debt."*

THE FOURTH SCHEDULE—*continued.**Another Form.*

Between *E. F.*                   ...                   ...                   ... *Plaintiff.*  
   and  
   *G. H.*                   ...                   ...                   ... *Defendant.*

*E. F.*, the above-named plaintiff, states as follows :—

1. *A. B.* of *K* in the                   duly made his last will, dated the [first day of March, 1873], whereby he appointed the defendant and *M. N.* [who died in the testator's life-time] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July, 1878,] and his will was proved by the defendant on the [fourth day of October, 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

(1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

Between *E. F.*                   ...                   ... *Plaintiff.*  
   and  
   *G. H.*                   ...                   ... *Defendant.*

*Written Statement of Defendant.*

1. *A. B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees                   , and the testator had some moveable property which the defendant got in, and which produced the nett sum of                   . rupees.

2. The defendant applied the whole of the said sums and the sum of rupees                   which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January, 1875], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

## No. 108.

## EXECUTION OF TRUSTS.

IN THE COURT OF                   , AT  
   *Civil Suit, No.*

• *A. B.* of                   ... *Plaintiff,*  
   *against*  
       *C. D.* of                   the beneficiary [or, one  
       of the beneficiaries]                   ... *Defendant.*

*A. B.*, the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the                   day of                   made upon the marriage of *E. F.* and *G. H.*, the

THE FOURTH SCHEDULE—*continued.*

father and mother of the defendant [*or, an instrument of assignment of the estate and effects of E. F. for the benefit of C. D., the defendant, and other the creditors of E. F.*]

2. The said A. B. has taken upon himself the burden of the said trust, and is in possession of [*or, of the proceeds of*] the moveable and immoveable property conveyed [*or assigned*] by the before-mentioned deed.

3. The said C. D. claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable, property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust*]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said C. D., the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D. and such other persons so interested as the Court may direct, or that the said C. D. may show good cause to the contrary.

[*N. B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis on the plaint by a legatee.*]

No. 109.

FORECLOSURE OR SALE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. By a mortgage-deed dated the      day of      18      , a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him the plaintiff, his heirs [*or executors, administrators,*] and assigns, for securing the principal sum of Rs.      together with interest thereon at the rate of Rs.      per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs.      for principal and interest on the said mortgage.

3. The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs.      with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises ; or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs ; and (*c*) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization ; and (*d*) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(*Title.*)

(*Alter Form No. 109 thus :—*)

*Transpose parties and also the facts in paragraph 1.*

*For paragraph 2, substitute—*

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs.      which the plaintiff is ready and willing

THE FOURTH SCHEDULE,—*continued.*

to pay to the defendant, of which the defendant, before filing this plaint, had notice.

*For paragraph 3, substitute—*

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to reconvey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any), as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

## No. 111.

## SPECIFIC PERFORMANCE. (No. 1.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. By agreement dated the day of and signed by the above-named defendant, C. D., he the said C. D. contracted to buy of [or sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3. The said A. B. has been and still is ready and willing specifically to perform the agreement on his part of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said C. D. specifically to perform the said agreement and to do all acts necessary to put the said A. B. in full possession of the said property [or to accept a conveyance and possession of the said property] and to pay the costs of the suit.

[N. B.—*In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

## No. 112.

## SPECIFIC PERFORMANCE (No. 2.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and the defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [Or, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment :

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [following the terms of the agreement] ;

(2) for rupees compensation for withholding the same.



THE FOURTH SCHEDULE—*continued.*

No. 113.

## PARTNERSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. He and the said C. D., the defendant, have been for the space of        years [or months] last past carrying on business together at        within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [or, under a certain deed sealed and executed by them respectively, or, under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [or deed, or agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [or deed, or agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by        of        , pleader        for the plaintiff, [or by        ].

[N. B.—In suits for winding-up of any partnership, omit the prayer for dissolution : but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

No. 114.

## FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 58.]

Money lent.	The plaintiff's claims is        rs. for money lent [and interest.]
Several demands.	The plaintiff's claim is        rs. whereof        rs. is for the price of goods sold, and        rs. for money lent, and        rs. for interest.
Rent.	The plaintiff's claim is        rs. for arrears of        rent.
Salary, &c.	The plaintiff's claim is        rs. for arrears of salary as a clerk (or, as the case may be).
Interest.	The plaintiff's claim is        rs. for interest upon money lent.
General average.	The plaintiff's claim is        rs. for a general average contribution.
Freight, &c.	The plaintiff's claim is        rs. for freight and demurrage.
Banker's balance.	The plaintiff's claim is        rs. for money deposited with the defendant as a banker.

THE FOURTH SCHEDULE,—*continued.*

Fees, &c., as pleader.	The plaintiff's claim is rs. for fees for work done (and rs. money expended) as a pleader.
Commission.	The plaintiff's claim is rs. for commission earned as ( <i>state character</i> —as auctioneer, cotton-broker, &c.).
Medical attendance.	The plaintiff's claim is rs. for medical attendances.
Return of premium.	The plaintiff's claim is rs. for a return of premiums paid upon policies of insurances.
Ware house-rent	The plaintiff's claim is rs. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is rs. for the carriage of goods by railway.
Use and occupation of house.	The plaintiff's claim is rs. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is rs. for the hire of (furniture.)
Work done.	The plaintiff's claim is rs. for work done as a [surveyor.]
Board and lodging.	The plaintiff's claim is rs. for board and lodging.
Schooling.	The plaintiff's claim is rs. for the (board, lodging and) tuition of X. Y.
Money received.	The plaintiff's claim is rs. for money received by the defendant as pleader ( <i>or</i> factor, <i>or</i> collector, <i>or</i> &c.) of the plaintiff.
Fees of office.	The plaintiff's claim is rs. for fees received by the defendant under colour of the office of
Money over-paid.	The plaintiff's claim is rs. for a return of money overcharged for the carriage of goods by railway.
The plaintiff's claim is	rs. for a return of fees overcharged by the defendant
Return of money by stake-holder.	The plaintiff's claim is rs. for a return of money deposited with the defendant as stake-holder.
Money won from stakeholder.	The plaintiff's claim is rs. for money entrusted to the defendant as stake-holder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is rs. for a return of money entrusted to the defendant as agent of the plaintiff.
Money obtained by fraud.	The plaintiff's claim is rs. for a return of money obtained from the plaintiff by fraud.
Money paid by mistake.	The plaintiff's claim is rs. for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is rs. for a return of money paid to the defendant for (work to be done, <i>or</i> , work left undone; <i>or</i> , a bill to be taken up, <i>or</i> , a bill not taken up; <i>or</i> , &c.)
Money paid by surety for defendant.	The plaintiff's claim is rs. for a return of money paid as a deposit upon shares to be allotted.
The plaintiff's claim is	rs. for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is rs. for money paid for rent due by the defendant.
Money paid on accommodation bill.	The plaintiff's claim is rs. upon a bill of exchange accepted ( <i>or</i> indorsed) for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is rs. for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is rs. for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff

THE FOURTH SCHEDULE—*continued.*

Money paid for calls.	The plaintiff's claim is      rs. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is      rs. for money payable under an award.
Life policy.	The plaintiff's claim is      rs. upon a policy of insurance upon the life of X. Y., deceased.
Money-bond.	The plaintiff's claim is      rs. upon a bond to secure payment of      rs. and interest.
Foreign judgment.	The plaintiff's claim is      rs. upon a judgment of the Court in [the Empire of Russia.]
	The plaintiff's claim is      rs. upon a cheque drawn by the defendant.
Bills of exchange, &c.,	The plaintiff's claim is      rs. upon a bill of exchange accepted [ <i>or drawn, or indorsed</i> ] by the defendant.
	The plaintiff's claim is      rs. upon a promissory note made [ <i>or indorsed</i> ] by the defendant.
	The plaintiff's claim is      rs. against the defendant, A. B., as acceptor, and against the defendant, C. D., as drawn [ <i>or indorser</i> ] of a bill of exchange.
Surety.	The plaintiff's claim is      rs. against the defendant as surety for the price of goods sold.
	The plaintiff's claim is      rs. against the defendant, A. B., as principal, and against the defendant, C. D., as surety, for the price of goods sold [ <i>or for arrears of rent, or for money lent, or for money received by the defendant, A. B., as traveller for the plaintiff, or &amp;c.</i> ]
Calls.	The plaintiff's claim is      rs. for calls upon shares.
<i>Indorsement for Costs, &amp;c.</i>	
[ <i>Add to the above forms</i> ] and      rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within      days [ <i>or if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order</i> ] from the service hereof, further proceedings will be stayed.	
<i>Damages and other Claims.</i>	
Agent &c.	The plaintiff's claim is for damages for breach of contract to employ the plaintiff as traveller.
	The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller (and      rs. for arrears of wages.)
	The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.
	The plaintiff's claim is for damages for breach of duty as factor ( <i>or, &amp;c.</i> ) of the plaintiff (and      rs. for money received as factor, <i>or, &amp;c.</i> )
Apprentices.	The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant ( <i>or plaintiff.</i> )
Arbitration.	The plaintiff's claim is for damages for noncompliance with the award of X. Y.
Assault, &c.	The plaintiff's claim is for damages for assault (and false imprisonment, and for malicious prosecution).
By husband and wife.	The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, C. D.
Against husband and wife.	The plaintiff's claim is for damages for assault by the defendant, C. D.
Pleader.	The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.
	The plaintiff's claim is for damages for negligence in the custody of goods (and for wrongfully detaining the same.)
Ballment.	

THE FOURTH SCHEDULE—*Continued.*

Pledge. The plaintiff's claim is for damages for negligence in the keeping of goods pawned (and for wrongfully detaining the same.)

Hire. The plaintiff's claim is for damages for negligence in the custody of furniture (or, a carriage) lent on hire, (and for wrongfully &c.)

Banker. The plaintiff's claim is for damages for wrongfully neglecting (or refusing) to pay the plaintiff's cheque.

Bill. The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond. The plaintiff's claim is upon a bond conditioned not to carry on the trade of a .

Carrier. The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Charter-party. The plaintiff's claim is for damages for breach of charter-party of ship (*Mary.*)

Claim for return of damages. The plaintiff's claim is for return of household furniture, (or, &c.,) or their value, and for damages for detaining the same.

Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

Defamation. The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander,

Wrongful distress. The plaintiff's claim is for damages for improperly distraining.

[*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular.*]

Ejectment. The plaintiff's claim is to recover possession of a house, No. in Street, or of a farm called Blackacre, situate in the of in the of To Establish title and The plaintiff's claim is to establish his title to [*here recover rents. describe property*] and to recover the rents thereof.

[*The two previous Forms may be combined.*]

Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse (or a business, or shares, or, &c.)

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance. The plaintiff's claim is for a loss under a policy upon the ship [*Royal Charter*], and freight of cargo (or for return of premiums.)

THE FOURTH SCHEDULE—(continued.)

[*This Form shall be sufficient whether the loss claimed be total or partial.*]

**Fire-insurance.** The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

**Landlord and tenant.** The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

**Medical man.** The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

**Mischievous animal.** The plaintiff's claim is for damages for injury by the defendant's dog.

**Negligence.** The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

The plaintiff's claim is as executor of A. B., deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

**Act XIII of 1885.** The plaintiff's claim is for damages for breach of promise of marriage.

**Promise of marriage.** The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

**Sale of goods.** The plaintiff's claim is for damages for non-delivery (or short delivery, or defective quality, or other breach of contract of sale) of cotton (or, &c.)

The plaintiff's claim is for damages for breach of warranty of a horse.

**Sale of land.** The plaintiff's claim is for damages for breach of a contract to sell (or purchase) land.

The plaintiff's claim is for damages for breach of a contract to let (or take) a house.

The plaintiff's claim is for damages for breach of a contract to sell (or purchase) the lease, with good-will, fixtures, and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title (or for quiet enjoyment, or, &c.) in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well (or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river.)

**Support.** The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land (or house, or mine).

**Way.** The plaintiff's claim is for damages for wrongfully obstructing a way (public highway, or private way.)

**Water-Course, &c.** The plaintiff's claim is for damages for wrongfully diverting (or obstructing, or polluting, or diverting water from) a water-course.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land (or into the plaintiff's mine).

THE FOURTH SCHEDULE—*continued*.

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture. The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

*This Form shall be sufficient whatever the nature of the right to pasture be.*

Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Patent. The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copyright. The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trademark. The plaintiff's claim is for damages for wrongfully using (or imitating) the plaintiff's trade mark.

Work. The plaintiff's claim is for damages for breach of a contract to build a ship (or to repair a house, &c.).

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (or, &c.)

The plaintiff's claim is for damages from nuisance by noise from the defendant's works (or stables, or &c.)

Injunction. (Add to indorsement) :—and for an injunction.

(Add to indorsement where claim is to land, or to establish title, or both) :—

Mesne profits. and for mesne profits,

Arrears of rent. and for an account of rents or arrears of rent,

Breach of covenant. and for breach of covenant for (repairs),

## 1. Creditor to administer Estate.

The plaintiff's claim is as a creditor of X. Y., of , deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the administrator of the said X. Y. [and the defendants, E. F. and G. H., as his co-heirs at law.]

## 2. Legatee to administer Estate.

The plaintiff's claim is as a legatee under the will dated the       day of 18 , of X. Y., deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the executor of the said X. Y. (and the defendants E. F. and G. H., as his devisees).

## 3. Partnership.

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant (under articles of partnership dated the       day of ), and to have the affairs of the partnership wound up.

## 4. By Mortgagee.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the       day of , made between (parties) (or, by deposit of title-deeds,) and that the mortgage may be enforced by foreclosure or sale.

## 5. By Mortgagor.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated       and made between (parties), and to redeem the property comprised therein.

## THE FOURTH SCHEDULE—(continued.)

6. *Raising Portions.*

The plaintiff's claim is that the sum of        rs. which by a deed of settlement dated        was provided for the portions of the younger children of        may be raised

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated        and made between (*parties*) carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated        and made between (*parties*) set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the        day of        for the sale by the plaintiff to the defendant of certain, (freehold) hereditaments at        .

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No. 115.

## PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the        day of        of C. D., late of       , deceased, who died on the        day of       , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased (*or, as the case may be.*)

2. *By an executor or legatee of a former will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will dated the        day of        of C. D., late of       , deceased, who died on the        day of        and to have the probate of a pretended will of the said deceased, dated the        day of        revoked. This summons is issued against you as the executor of the said pretended will (*or, as the case may be.*)

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C. D., late of       , deceased, who died on the        day of       , dated the        day of       .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of C. D. of       , deceased, who died on the        day of       , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased (*or, as the case may be.*)

THE FOURTH SCHEDULE,—*continued.*

F.—MISCELLANEOUS.

**No. 116.**

**Section 58 of the Code of Civil Procedure.**

Court of the                      of                      holden at  
REGISTER OF CIVIL SUITS in the year 18 .

[illegible]



**THE FOURTH SCHEDULE**—*continued.*

No. 117.

### SUMMONS FOR DISPOSAL OF SUIT.

(Sections 64 and 68 of the Code of Civil Procedure.)

(Title.)

To

dwelling at

**NOTICE.**—I. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS \_\_\_\_\_ has instituted a suit against you for \_\_\_\_\_ you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day beforementioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader \_\_\_\_\_, which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of  
the Court this      day of      18      .

[L. S.]

*Judge.*

NOTE.—If written statements are required say—You are [or such a party is, as the case may be] required to put in a written statement by the day of -

No. 118.

## SUMMONS FOR SETTLEMENT OF ISSUES.

~~(Sections 64 and 68 of the Code of Civil Procedure.)~~

(Title.)

To

dwelling at

**NOTICE.**—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that

WHEREAS

has instituted a suit against you for

you are hereby summoned to appear in

this Court in person or by a duly authorized

pleader of the Court, duly instructed,

and able to answer all material questions

THE FOURTH SCHEDULE,—*continued.*

you have a right to call on the witness to produce on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18, at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader

, which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18.

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

## No. 119.

## SUMMONS TO APPEAR.

(Section 68 of the Code of Civil Procedure.)

No. of suit.

IN THE COURT OF ● AT

Plaintiff.

Defendant.

To

(Name, description and address.)

WHEREAS [here enter the name, description and address of the plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as the register]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [If not specially required to appear in person, state—"in person or by a pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. [If the summons be for the final disposal of the suit, this further direction shall be added here; "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) here mention any document the production of which may be required by the plaintiff, which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

Given under my hand and the seal of the Court this day of 18.

[L. S.]

Judge.

THE FOURTH SCHEDULE—*continued.*

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF  
ANOTHER COURT.

(Section 85 of the Code of Civil Procedure.)

IN THE COURT OF                                 AT  
Civil Suit, No.                                 of 18  
*A. B.* of  
*against*  
*C. D.* of

The day of 18 .

WHEREAS it is stated in the complaint that \_\_\_\_\_, the defendant in the above suit is at present residing in \_\_\_\_\_, but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons returnable on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ be forwarded for service on the said defendant, to the Court of \_\_\_\_\_ with a duplicate of this proceeding.

[L. S.]

*Judge.*

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

(Section 85 of the Code of Civil Procedure.)

IN THE COURT OF                      AT

Civil Suit, No.	of 18 . .
The day of	18 . .
	A. B. of
	<i>against</i>
	C. D. of

Read proceeding from the forwarding  
civil No. for service on in  
of that Court.

Read bailiff's endorsement on the back of the process stating that the \_\_\_\_\_ and \_\_\_\_\_  
proof of the above having been duly taken by me on the (oath or) affirmation of \_\_\_\_\_  
and \_\_\_\_\_ it is ordered that the \_\_\_\_\_ be returned to the \_\_\_\_\_ with a copy of this proceeding.

[L. S.]

*Judge.*

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 122.

### DEFENDANT'S STATEMENT.

(Section 110 of the Code of Civil Procedure.)

(Title.)

I, the undersigned defendant (or one of the defendants), disclaim all interest under the will of the said E. F. in the plaint, named (or, as heir-at-law, or, as next-of-kin, or one of the next-of-kin, of E. F., deceased, in the said plaint named.)

Or, I, the undersigned defendant, state that I admit (or deny) (here repeat in the language of the plaintiff the statements admitted or denied).

THE FOURTH SCHEDULE—*continued.*

*Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced (or, that it appears upon the said plaint that I am jointly liable with one E. F. who is not a party to the suit, and not severally liable as by the plaint appears, or, that it appears by the said plaint that G. H. should have been a joint-plaintiff with the said A. B. in the said suit, (or, as the case may be).*

*Or, that the plaintiff has conveyed his interest in the said mortgage (or right to redeem) to one I. J. (or, that I have conveyed or assigned to H. L. by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit, to be foreclosed).*

*Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading (or as the case may be).*

(*Signed*) C. D.,  
Defendant.

## No. 123.

## INTERROGATORIES.

(Section 121 of the Code of Civil Procedure.)

IN THE COURT OF                    AT                    .  
Civil Suit, No.                    of 18                    .  
A. B.  
*against*  
C. D., E. F. and G. H.

Interrogatories on behalf of above-named A. B. (or C. D.) for the examination of the above-named (E. F., and G. H., or A. B.)

1. Did not, &c.

2. Has not, &c.

The defendant E. F. is required to answer the interrogatories numbered.

The defendant G. H. is required to answer the interrogatories numbered.

## No. 124.

## FORM OF NOTICE TO PRODUCE DOCUMENTS.

(Section 131 of the Code of Civil Procedure.)

IN THE COURT OF                    AT                    .  
Civil Suit, No.                    of 18                    .  
A. B.  
*against.*  
C. D.

Take notice that the plaintiff (or defendant) requires you to produce for his inspection the following documents referred to in your plaint (or written statement, or affidavit), dated the       day of       18       .

*Describe documents required.*

X. Y., Pleader for the plaintiff (or the defendant.)

To Z.,  
Pleader for the defendant (or plaintiff).

THE FOURTH SCHEDULE—*continued.*

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

(Sections 159 and 163 of the Code of Civil Procedure.)

(Title.)

To

WHEREAS your attendance is required on behalf of the  
in the above cause, you are hereby required (personally to appear before this  
Court) on the day of 18 , at the hour of A. M. (and) to  
bring with you or to send to this Court .

A sum of Rs. , being your travelling and other expenses and subsistence-  
allowance for one day, is herewith sent. If you do not comply with this order,  
you will be subject to the consequence of non-attendance laid down in the Code  
of Civil Procedure, section 170.

Notice—(1). If you are summoned only to produce a document and not to  
give evidence, you shall be deemed to have complied with the summons if you  
cause such document to be produced in this Court on the day and hour aforesaid.

(2). If you are to be detained beyond the day aforesaid, a sum of Rs.  
will be tendered to you for each day's attendance beyond the day specified.

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 126.

Another Form.

No. of Suit.,

IN THE COURT OF AT

Plaintiff.

Defendant.

To

[Name, description and address.]

You are hereby summoned to appear in this Court in person on the day of  
at in the forenoon, to give evidence on behalf of the plaintiff (or the  
defendant) in the above-mentioned suit, and to produce (*here describe with convenient  
certainty any document the production of which may be required. If the summons  
be only to give evidence, or if it be only to produce a document, it must be expressed  
accordingly*), and you are not to depart thence until you have been examined  
(or have produced the document) and the Court has risen, or unless you have  
obtained the leave of the Court.

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(Title.)

Claim for

This cause coming on for final disposal before in the presence of ,  
on the part of the plaintiff, and on the part of the defendant, it is ordered that  
the do pay to the the sum of Rs. , with interest thereon  
at the rate of per cent. per from to the date of realization of the said sum,  
and do also pay to the the costs of this suit as taxed by the officer of the  
Court, with interest thereon at the rate aforesaid from the date of taxation of the  
date of realization.

THE FOURTH SCHEDULE—*continued.**Costs of Suit.*

PLAINTIFF.			DEFENDANT.		
	Rs.	A. P.		Rs.	A. P.
1. Stamp for plaint ...			Stamp for power ...		
2. Do. for power ...			Do. petition ...		
3. Do. exhibits ...			Pleader's fee ...		
4. Pleader's fees on Rs. ...			Subsistence for witnesses ...		
5. Translation-fee ...			Service of process ...		
6. Subsistence for witness for attendance. ...			Translation-fee ...		
7. Commissioner's fee ...			Commissioner's-fee ...		
8. Service of process ...					
9. &c. ...					
TOTAL ...			TOTAL ...		

Given under my hand and the seal of the Court, this      day of      18

[L. S.]  
Judge.

## No. 128.

## DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

*(Title.)*

It is ordered that it be referred to the Registrar (*or* Taxing Officer) to take an account of what is due to the plaintiff for principal and interest on the mortgage (*or* lien) mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar (*or* Taxing Officer) do declare in court on the      day of      what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in court the amount so due; it is ordered that the plaintiff do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such reconveyance being made, and documents being delivered up, the Registrar (*or* Taxing Officer) shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or* the premises subject to the said lien] be sold with the approbation of the Registrar [*or* Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

THE FOURTH SCHEDULE—*continued.*

No. 129.

## FINAL DECREE FOR FORECLOSURE.

(Title.)

Whereas it appears to the Court that the defendant has not paid into court the sum which was on the day of last declared in court to be due to the plaintiff for principal an interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

## PRELIMINARY ORDER—ADMINISTRATION SUIT.

(Section 213 of the Code of Civil Procedure.)

(Title.)

It is ordered the following accounts and inquiries be taken and made : that is to say :—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. An account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

(After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.)

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the day of next, pay into court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into court.

8. And that Mr. E. F. be Receiver in the suit (or proceeding), and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar (and shall give security by bond for the due performance of his duties to the amount of rupees).

## THE FOURTH SCHEDULE—(continued.)

9. And it is further ordered, that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

(a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof ;

(c) an account, so far as possible, of what is to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers and shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered, that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered, that for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered, that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of      and that the Registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of      .

14. And, lastly, it is ordered, that this suit (or matter) stand adjourned for making final decree to the day of      .

[Such part only of this order is to be used as is applicable to the particular case.]

## No. 131.

## FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

## (Section 213 of the Code of Civil Procedure.)

1. It is ordered that the defendant      do on or before the day of      pay into court the sum of Rs.      , the balance by the said certificate found to be due from the said defendant on account of the estate of      , the testator, and also the sum of Rs.      for interest, at the rate of Rs.      per centum per annum, from the day of      to the day of      amounting together to the sum of Rs.      .

2. Let the Registrar (or Taxing officer) of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs.      ordered to be paid into court as aforesaid, as follows :—

(a).—The costs of the plaintiff to Mr.      , his attorney (or pleader), and the costs of the defendant to Mr.      , his attorney (or pleader).

(b).—And (if any debts are due) with the residue of the said sum of Rs.      , after payment of the plaintiff's and defendant's costs as aforesaid, let the sums



THE FOURTH SCHEDULE—*continued.*

found to be owing to the several creditors mentioned in the                      schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid ; and after making such payments, let the amount coming to the several legatees mentioned in the                      schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(Section 213 of the Code of Civil Procedure.)

1. Declare that the defendant is personally liable to pay the legacy of Rs.                      bequeathed to the plaintiff ;

2. And it is ordered, that an account be taken of what is due for principal and interest on the said legacy ;

3. And it is also ordered, that the defendant do within                      weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest ;

4. And it is ordered, that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(Section 213 of the Code of Civil Procedure.)

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs.                      , the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered, that the residue of the said sum of Rs.                      , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

(a).—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, A. B., and C, his wife, in her right, as the sister and one of the next-of-kin of the said E. F., the intestate.

(b).—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said E. F., the intestate.

(c).—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

THE FOURTH SCHEDULE—*continued.*

No. 132.

## ORDER—DISSOLUTION OF PARTNERSHIP.

(Section 215 of the Code of Civil Procedure.)

(Title.)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the      day of      , and it is ordered that the dissolution thereof as from that day be advertised in the      *Gazette*, &c.

And it is ordered that      be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership ;
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the      day of      , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the      day of      .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the      day of      .

No. 133.

## PARTNERSHIP—FINAL DECREE.

(Section 215 of the Code of Civil Procedure.)

IN THE COURT OF      AT      .

Civil Suit, No.

A. B. of  
against  
C. D. of

It is ordered that the fund now in court, amounting to the sum of Rs.      be applied as follows :—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.
2. In payment of the costs of all parties in this suit, amounting to Rs.  
(These costs must be ascertained before the decree is drawn up.)

THE FOURTH SCHEDULE—*continued.*

3. In payment of the sum of Rs.            to the plaintiff as his share of the partnership-assets, of the sum of Rs.           , being the residue of the said sum of Rs. now in court, to the defendant as his share of the partnership-assets.

(Or, And that the remainder of the said sum of Rs.            be paid to the said plaintiff (~~or~~ defendant) in part payment of the sum of Rs.            certified to be due to him in respect of the partnership-accounts.)

And that the defendant [*or* plaintiff] do on or before the            day of            pay to the plaintiff (*or* defendant) the sum of Rs.            being the balance of the said sum of Rs.            due to him, which will then remain due.

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No. 134.

## CERTIFICATE OF NON-SATISFACTION OF DECREE.

(Section 224 of the Code of Civil Procedure.)

IN THE COURT OF            AT            .  
Civil Suit, No.            of 18            .  
A. B. of             
against             
C. D. of           

Certified that no (*or* partial, as the case may be, and if partial, state to what extent) satisfaction of the decree of this Court, in Civil Suit No.            of 18           , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Given under my hand and the seal of the Court, this            day of            18            .

[L. S.]  
Judge.

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No. 135.

## NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

(Section 248 of the Code of Civil Procedure.)

IN THE COURT OF            AT            ,  
Civil Suit, No.            of 18            .  
Miscellaneous, No.            of 18            .  
A. B. of             
against             
C. D. of           

To

Whereas            has made application to this Court for execution of decree in Civil Suit No.            18           , this is to give you notice that you are to appear before this Court on the            day of            18           , either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

Given under my hand and the seal of the Court, this            day of            18            .

[L. S.]  
Judge.

THE FOURTH SCHEDULE,—*continued*.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION  
IN EXECUTION OF A DECREE FOR MONEY.

(Section 254 of the Code of Civil Procedure.)

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered, by decree of this Court, passed on the      day of  
18      , in the Suit No.      of      18      ,

DECREE.					
Principal ...	...	...			
Interest ...	...	...			
Costs ...	...	...			
Costs of decree ...	...	...			
Interest thereon ...	...	...			
Total of attachment ...	...	...			
TOTAL ...	...	...			

to pay to the plaintiff the sum of Rs.  
as noted in the margin ; and whereas the  
said sum of Rs.      has not been paid

These are to command you to attach the  
moveable property of the said      as set  
forth in the list hereunto annexed, or which  
shall be pointed out to you by the said      ,  
and unless the said      shall pay to you the  
said sum of Rs.      together with Rs.      ,  
the costs of this attachment, to hold the  
same until further orders from this Court.

You are further commanded to return  
this Warrant on or before the      day of  
18      , with an endorsement certifying  
the date and manner in which it has been  
executed, or why it has not been executed.

Given under my hand and the seal of the Court, this      day of      18      .

*Schedule.*

[L. S.]

*Judge.*

No. 137.

## WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &amp;c.

(Section 263 of the Code of Civil Procedure.)

(Title.)

TO THE BAILIFF OF THE COURT.

Whereas      in the occupancy of      has been decreed to      , the  
plaintiff in this suit : you are hereby directed to put the said      in possession of  
the same, and you are hereby authorized to remove any person \*bound by the decree  
who may refuse to vacate the same.

Given under my hand and the seal of the Court, this      day of      18      .

[L. S.]

*Judge.*

THE FOURTH SCHEDULE,—*continued.*

No. 138.

## ATTACHMENT IN EXECUTION.

Prohibitory Order, where the Property to be attached consists of moveable Property, to which the Defendant is entitled subject to a Lien or Right of some other Person to the immediate Possession thereof.  
(Section 268 of the Code of Civil Procedure.)  
(*Title.*)

To

Whereas \_\_\_\_\_ has failed to satisfy a decree passed against \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ in favour of \_\_\_\_\_ for Rs. \_\_\_\_\_ : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from \_\_\_\_\_ the following property in the possession of the said \_\_\_\_\_ that is to say, \_\_\_\_\_ to which the defendant is entitled, subject to any claim of the said \_\_\_\_\_, and the said \_\_\_\_\_ is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

[L. S.]

*Judge.*

No. 139.

## ATTACHMENT IN EXECUTION.

Prohibitory Order, where the Property consists of Debts not secured by negotiable Instruments.

(Section 268 of the Code of Civil procedure.)

(Title.)

To

Whereas \_\_\_\_\_ has failed to satisfy a decree passed against \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, in Civil Suit, No. \_\_\_\_\_ of 18 \_\_\_\_\_, in favour of \_\_\_\_\_ for Rs. \_\_\_\_\_ : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, \_\_\_\_\_, and that you, the said \_\_\_\_\_, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

[L. S.]

*Judge.*

No. 140.

## ATTACHMENT IN EXECUTION.

Prohibitory Order, where the property consists of Shares in a Public Company, &c.,  
(Section 268 of the Code of Civil Procedure.)

(Title.)

To

Defendant, and to \_\_\_\_\_, Manager of \_\_\_\_\_ Company.

Whereas \_\_\_\_\_ has failed to satisfy a decree passed against \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, in Civil Suit. No. \_\_\_\_\_ of 18 \_\_\_\_\_ in favour of \_\_\_\_\_ of Rs. \_\_\_\_\_

## THE FOURTH SCHEDULE—(continued.)

it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained until the further order of this Court, from making any transfer of shares in the aforesaid Company, namely, or from receiving payment of any dividends thereof; and you, the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

Given under my hand and the seal of the Court, this 18 day of [L. S.]  
Judge.

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No. 141.

## ATTACHMENT IN EXECUTION.

Prohibitory Order, where the Property consists of Immoveable Property.  
(Section 274 of the Code of Civil Procedure.)

(Title.)

To

Defendant.

Whereas you have failed to satisfy a decree passed against you on the 18 day of 18, in Civil Suit, No. of 18, in favour of Rs. : it is ordered that you, the said, be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

Given under my hand and the seal of the Court, this 18 day of [L. S.]  
Schedule. Judge.

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No. 142.

## ATTACHMENT.

Prohibitory Order, where the Property consists of Money or of any Security in the Hands of a Court of Justice or Officer of Government.  
(Sections 272 and 486 of the Code of Civil Procedure.)

IN THE COURT OF AT .

Civil Suit, No. of 18 .  
A. B. of  
against.  
C. D. of

To

Sir,—The plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, &c.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient Servant,

[L. S.]  
Judge.

Dated the day of 18 .

THE FOURTH SCHEDULE,—continued.

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &C., OF MONEY, &C., IN THE  
HANDS OF A THIRD PARTY.

(Section 277 of the Code of Civil Procedure.)

IN THE COURT OF                      AT .  
Civil Suit, No.                      of 18 .  
Miscellaneous, No.                  of 18 .  
.                      \*                      A. B. of  
  *against.*  
  C. D. of

TO THE BAILIFF OF THE COURT AND TO

Whereas the following property has been attached in execution of a decree in Civil Suit, No. of 18, passed on the day of 18, in favour of for Rs. : it is ordered that the property so attached, consisting of Rs. in money, and Rs. in Currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said, to, and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof to satisfy the said decree, shall be paid over to the said and the remainder if any, shall be paid to you, the said

Given under my hand and the seal of the Court, this                      day of                      18

[L. S.]

*Judge.*

No. 144.

## NOTICE TO ATTACHING CREDITOR.

(Section 278 of the Code of Civil Procedure.)

IN THE COURT OF                      AT .  
Civil Suit, No.                      of 18 .  
Miscellaneous, No.                  of 18  
A. B. of  
*against*  
C. D. of

To

Whereas has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Civil Suit, No. of 18, this is to give you notice to appear before this Court on, the day of, 18, either in person or by a pleader of the Court duly instructed, to support your claim, as attaching creditor.

Given under my hand and the seal of the Court, this            day of    18    .

[L. S.]

*Judge.*

THE FOURTH SCHEDULE—*continued.*

No. 145.

## WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

(Section 287 of the Code of Civil Procedure.)

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B. of

*against.*

C. D. of

## TO THE BAILIFF OF THE COURT.

These are to command you to sell by auction, after giving                      day's previous notice, by affixing the same in this court-house, and after making due proclamation,\* the                      property attached under a warrant from this Court dated the                      day of                      18                      , in execution of a decree in favour of                      in                      suit No.                      of 18                      , or so much of the said property as shall realize the sum of Rs.                      being the                      of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the                      day of                      18                      , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this                      day of                      18                      .

[L. S.]

*Judge.*

No. 146.

## NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION.

(Section 500 of the Code of Civil Procedure.)

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

*against*

C. D. of

To

Whereas                      has been the purchaser at a sale by auction in execution of the decree in the above suit of                      now in your possession, you are hereby prohibited from delivering possession of the said                      to any person except the said

Given under my hand and the seal of the Court, this                      day of                      18                      .

[L. S.]

*Judge.*

\* This proclamation shall specify the time, the place of sale, the property to be sold the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified.



THE FOURTH SCHEDULE—*continued.*

No. 147.

## PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

(Section 301 of the Code of Civil Procedure.)

IN THE COURT OF AT  
Civil Suit, No. of 18  
A. B. of  
against  
C. D. of

To

and to

Whereas has become the purchaser at a public sale in execution of the decree in the above suit of certain debt due from you to you, that is to say, it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

Given under my hand and the seal of the Court, this day of  
[L. S.]  
Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.  
(Section 301 of the Code of Civil Procedure.)

IN THE COURT OF AT  
Civil Suit, No. of 18  
A. B. of  
against  
C. D. of

To

and Manager of Company,

Whereas has become the purchaser at a public sale in execution of the decree, in the above suit of certain shares in the above Company, that is to say, of standing in the name of you, it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said the purchaser aforesaid, or from receiving any dividends thereon; and you, Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said, the purchaser aforesaid.

Given under my hand and the seal of the Court, this day of 18  
[L. S.]  
Judge.

No. 149.

ORDER CONFIRMING SALE OF LAND, &c.  
(Section 312 of the Code of Civil Procedure.)  
IN THE COURT OF AT  
Civil Suit, No. of 18

A. B. of  
against  
C. D. of

Whereas the following land (or immoveable property) was on the day of 18 sold by the Bailiff of this Court in execution of the decree in this suit; and whereas days have elapsed and no application has been made (or objection allowed) to

THE FOURTH SCHEDULE—*continued.*

the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

Given under my hand and the seal of the Court, this                      day of                      18                      .  
Schedule.

[L. S.]  
Judge.

\_\_\_\_\_  
No. 150.

## CERTIFICATE OF SALE OF LAND.

(Section 316 of the Code of Civil Procedure.)

IN THE COURT OF                      AT                      .  
Civil Suit, No.                      of 18                      .

A. B. of  
against  
C. D. of

This is to certify that                      has been declared the purchaser at sale by public  
auction on the                      day of                      18                      of

in execution of decree in  
this suit, and that the said sale has been duly confirmed by the Court.

Given under my hand and the seal of the Court, this                      day of                      18                      .

[L. S.]  
Judge.

\_\_\_\_\_  
No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN  
EXECUTION.

(Section 318 of the Code of Civil Procedure.)

IN THE COURT OF                      AT                      .  
Civil Suit, No.                      of 18                      .

A. B. of  
against  
C. D. of

## TO THE BAILIFF OF THE COURT.

Whereas                      has become the certified purchaser of                      at a sale in execution  
of the decree in Civil Suit No.                      of 18                      ; and whereas such land is in the  
possession of                      , you are hereby ordered to put the said                      , the certified purchaser,  
as aforesaid, into possession of the said                      and if need be, to remove any person  
who may refuse to vacate the same.

Given under my hand and the seal of the Court, this                      day of

[L. S.]  
Judge.

\_\_\_\_\_  
No. 152.

## AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

(Section 326 of the Code of Civil Procedure.)

IN THE COURT OF                      AT                      .  
Civil Suit, No.                      of 18                      .

A. B. of  
against  
C. D. of

To

Collector of

Sir,

In answer to your communication No.                      , dated                      , representing that the  
sale in execution of the decree in this suit of                      and, lying within your district, pay-  
ing revenue to Government, is objectionable, I have the honour to inform you that

THE FOURTH SCHEDULE—*continued.*

you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,

Sir,

Your obedient Servant,

[L. S.]  
Judge.

No. 153.

ORDER FOR COMMITTAL FOR RESISTING, &c., EXECUTION OF DECREE FOR LAND.

(Section 329 of the Code of Civil Procedure.)

(Title.)

To

Whereas it appears to the Court that  
has without just cause resisted [*or obstructed*] the execution of the decree of the Court passed against on the day of 18, in Civil Suit, No. of 18, whereby certain land or immoveable property was adjudged to, it is ordered that the said be committed to custody for a period of days.

Given under my hand and the seal of the Court, this day of 18.

[L. S.]  
Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

(Section 337 of the Code of Civil procedure.)

IN THE COURT OF AT

Civil Suit, No. of 18.

Miscellaneous, No. of 18.

A. B. of  
*against*  
C. D. of

TO THE BAILIFF OF THE COURT.

Whereas was adjudged by a decree of the Court, in No. of 18, dated 18, to pay to the plaintiff the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of Rs. together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day

Principal ...	...		
Interest ...	...		
Costs ...	...		
Execution ...	...		
TOTAL ...	...		

THE FOURTH SCHEDULE,—*continued.*

of 18 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]  
Judge.

## No. 155.

## NOTICE OF PAYMENT INTO COURT.

(Section 377 of the Code of Civil Procedure.)

IN THE COURT OF 18 .

B. No.

A. B. v. C. D.

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.]

To Mr. X. Z.,  
the Plaintiff's Pleader,  
Z.,  
Defendant's Pleader.

## No. 156.

## COMMISSION TO EXAMINE ABSENT WITNESSES.

(Section 386 of the Code of Civil Procedure.)

IN THE COURT OF AT .  
Civil Suit, No. of 18 .

A. B. of  
against  
C. D. of

To

WHEREAS the evidence of is required by the in the above suit; and whereas you are requested to take the examination on interrogatories [or *vivâ voce*] of such witnesses and you are hereby appointed a Commissioner for that purpose and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witness will be issued by this Court on your application].\*

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]  
Judge.

## No. 157.

## COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

(Sections 392 and 394 of the Code of Civil Procedure.)

IN THE COURT OF AT .  
Civil Suit, No. of 18

A. B. of  
against  
C. D. of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission should be issued; you are hereby appointed Commissioner for the purpose of

\* Not necessary where the commission goes to another Court.

THE FOURTH SCHEDULE—*continued.*

[process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application.]\*

A sum of Rs. , being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]

*Judge.*

No. 158.

## WARRANT OF ARREST BEFORE JUDGMENT.

(Section 478 of the Code of Civil Procedure.)

IN THE COURT OF AT  
Civil Suit, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

Whereas , the plaintiff in the above suit, has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to , these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]

*Judge.*

No. 159.

## ORDER FOR COMMITTAL.

(Section 481 of the Code of Civil Procedure.)

IN THE COURT OF AT  
Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

Whereas , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against in the suit ; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which has failed to do ; it is ordered that the said defendant be committed to custody until the decision of the suit ; or if judgment be given against , until the execution of the decree.

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]

*Judge.*

\* Not necessary where the commission goes to another Court.

THE FOURTH SCHEDULE,—*continued.*

No. 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY  
FOR FULFILMENT OF DECREE.

(Section 484 of the Code of Civil Procedure.)

IN THE COURT OF                      AT  
Civil Suit, No.                      of 18  
A. B. of  
*against*  
C. D. of

TO THE BAILIFF OF THE COURT.

Whereas has proved to the satisfaction of the Court that the defendant in the above suit these are to command you to call upon the said defendant on or before the day of either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security ; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution thereof, and have you here then this warrant.

Given under my hand and the seal of the Court, this            day of    18    .  
[L. S.]  
*Judge.*

No. 161.

**ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH  
SECURITY.**

(Section 485 of the Code of Civil Procedure.)

IN THE COURT OF                                 AT  
Civil Suit, No.                                 of 18  
A. B. of  
*against*  
C. D. of

TO THE BAILIFF OF THE COURT.

Whereas \_\_\_\_\_, the plaintiff in this suit, has applied to the Court to call upon \_\_\_\_\_, the defendant, to furnish security to fulfil any decree that may be passed against \_\_\_\_\_ in the suit, and whereas the Court has called upon the said \_\_\_\_\_ to furnish such security which \_\_\_\_\_ has failed to do \_\_\_\_\_; these are to command you to attach \_\_\_\_\_ the property of the said \_\_\_\_\_ and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

Given under my hand and the seal of the Court, this      day of      18  
[L. S.]  
*Judge.*

THE FOURTH SCHEDULE—continued.

No. 162.

### ATTACHMENT BEFORE JUDGMENT.

**Prohibitory Order, where the Property to be attached consists of moveable Property, to which the Defendant is entitled, subject to a Lien or Right of some other Persons to the immediate Possession thereof.**

(Section 486 of the Code of Civil Procedure.)

IN THE COURT OF                      AT  
Civil Suit, No.                      of 18  
A. B. of  
*against*  
C. D. of

To Defendant,

It is ordered that you the said \_\_\_\_\_ be, and you are hereby, prohibited and restrained until the further order of this Court from receiving from \_\_\_\_\_ the following property in the possession of the said \_\_\_\_\_ that is to say \_\_\_\_\_ to which the defendant is entitled, subject to any claim of the said \_\_\_\_\_ and the said \_\_\_\_\_ is hereby prohibited and restrained, until the further order of this Court, from delivering the said property, to any persons whomsoever.

Given under my hand and the seal of the Court, this            day of         18 .  
[L. S.]  
*Judge.*

No. 163.

## ATTACHMENT BEFORE JUDGMENT.

**Prohibitory Order, where the Property consists of Immoveable Property.**  
(Section 486 of the Code of Civil Procedure.)

IN THE COURT OF                      AT  
Civil Suit, No.                      of 18  
A. B. of  
*against*  
C . D. of

To \_\_\_\_\_ Defendant,

It is ordered that you the said \_\_\_\_\_ be, and hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

*Schedule.*

[L. S.]  
Judge,

No. 164.

## ATTACHMENT BEFORE JUDGMENT.

**Prohibitory Order, where the Property consists of Money in the Hands of other Persons, or of Debts not being negotiable Instruments.**  
(Section 486 of the Code of Civil Procedure.)

IN THE COURT OF  
Civil Suit, No.

AT  
of 18

A. B. of  
*against*  
C. D. of

To

It is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the (money

## THE FOURTH SCHEDULE—(continued.)

now in hands belonging to the said defendant, or debts, as the case may be, describing them) and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said (money, &c.), or any part thereof, to any person whomsoever.

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]  
Judge.

No. 165.

## ATTACHMENT BEFORE JUDGMENT.

Prohibitory Order, where the Property consists of Shares in public Company, &c.  
(Section 486 of the Code of Civil Procedure.)

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To Defendant and to

Manager of

Company.

It is ordered that , the defendant, be, and hereby, prohibited and restrained, until the further order of the Court, from making any transfer of shares being in the aforesaid Company, or from receiving payment of any dividends thereof, and you Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

Given under my hand and the seal of the Court, this day of 18 .

[L. S.]  
Judge.

No. 166.

## TEMPORARY INJUNCTIONS.

(Section 492 of the Code of Civil Procedure.)

Upon motion made unto this Court by , Pleader of (or Counsel for) the plaintiff, A. B., and upon reading the petition of the said plaintiff in this matter filed (this day) (or the plaint filed in this cause on the day of , or the written statement of the said plaintiff filed on the day of ) and upon hearing the evidence of and in support thereof, (if after notice and defendant not appearing : add, and also the evidence of as to service of notice of this motion upon the defendant, C. D.) This Court doth order that an injunction be awarded to restrain the defendant, C. D., his servants, workmen and agents from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned (or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned) being No. 9. Oilmongers Street, Hindupur, in the Taluq of and from selling the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

(Where injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus :—) to restrain the defendants and from parting with out of the custody of them or any of them or endor-



THE FOURTH SCHEDULE,—*continued.*

sing, assigning or negotiating the promissory note (or bill of exchange) in question, dated on or about the , &c., mentioned in the plaintiff's plaint (or petition) and the evidence heard at this motion until the hearing of this cause, or until the further order of this Court.

(*In Copyright cases*) to restrain the defendant, C. D., his servants, agents or workmen from printing, publishing, or vending a book called , or any part thereof, until the, &c.

(*Where part only of a book is to be restrained*) to restrain the defendant C. D., his servants, agents or workmen from printing, publishing, selling, or otherwise disposing of such parts of the book in the plaint (or petition and evidence, &c.) mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled (or which is contained in page to page both inclusive) until the , &c.,

(*In Patent case*) to restrain the defendant, C. D., his agents, servants and workmen, from making or vending any perforated bricks (or as the case may be) upon the principle of the inventions in the plaintiff's plaint (or petition, &c., or written statement, &c.) mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint (or as the case may be) mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, &c.

(*In case of Trademarks*) to restrain the defendant, C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking (or, as the case may be) described as or purporting to be blacking manufactured by the plaintiff, A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint (or petition, &c.) mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, A. B., until the, &c.

(*To restrain a partner from in any way interfering in the business*)

to restrain the defendant, C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security, in the name of the partnership-firm of B. & D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. & D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking, until the, &c.

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No. 167.

## NOTICE OF APPLICATION FOR INJUNCTION.

(Section 494 of the Code of Civil Procedure.)

IN THE COURT OF

AT

A. B. of

against

C. D. of

TAKE notice that I, A. B., intend to apply at the sitting of the Court at aforesaid, on the day of for an injunction to restrain C. D. from further prosecuting a suit which he has commenced against me in , to recover damages for

THE FOURTH SCHEDULE—*continued.*

the breach of the contract for the specific performance of which this suit was commenced (or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce or, as the case may be).

Dated this       day of       18       .

To C. D.

A. B.

(N. B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.)

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No. 168.

APPOINTMENT OF A RECEIVER.

(Section 503 of the Code of Civil Procedure.)

IN THE COURT OF       AT       .  
                          Civil Suit, No.       of 18       .  
    A. B. of  
    against  
    C. D. of

To

WHEREAS       has been attached in execution of a decree passed in the above suit on the       day of       18       , in favour of       : you are hereby (subject to your giving security to the satisfaction of the *Registrar*) appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on

You will be entitled to remuneration at the rate of       per cent, upon your receipts under the authority of this appointment.

Given under my hand and the seal of the Court, this       day of       18      

[L. S.]  
*Judge.*

---

No. 169.

BOND TO BE GIVEN BY RECEIVER.

(Section 503 of the Code of Civil procedure.)

IN THE COURT OF       AT       .  
                          Civil Suit, No.       of       .

A. B. of  
 against  
 C. D. of

Know all men by these presents, that we I. J. of, &c., and K. L. of &c., and M. N. of, &c., are jointly and severally bound to G. H., *Registrar* of the Court of       in Rs.       , to be paid to the said G. H. or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators. jointly and severally, by these presents.

Dated this       day of       18       .

THE FOURTH SCHEDULE—*continued.*

And whereas a plaint has been filed in this Court by A. B. against C. D. for the purpose of (*here insert object of suit*).

And whereas the said I. J. has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property, and to get in the outstanding moveable property of O. P., the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden I. J. shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property of the said O. P. (*or, as may be*) at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.  
K. L,  
M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.*

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No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.  
(Section 508 of the Code of Civil Procedure.)  
(*Title.*)

To

Whereas the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further-fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]  
*Judge.*

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No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.  
(Section 508 of the Code of Civil Procedure.)  
(*Title.*)

Upon reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing and submit the same to this Court, together with all proceedings, depositions, and exhibits in this suit, within one month from the date thereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to

(Name of Appellant) (plaintiff or defendant) above-named appeals to the High Court at (or District Court at \_\_\_\_\_, as the case may be) against the decree of \_\_\_\_\_ in the above suit dated the \_\_\_\_\_ day of \_\_\_\_\_, for the following reasons, namely, (here state the grounds of objection.)





To

Take notice that        has applied to this Court for a review of its judgment passed on the        day of        18        in the above case. The        day of        18        is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

Given under my hand and the seal of the Court, this        day of        18       

[L. S.]  
Judge.

-----  
No. 179.

NOTICE OF CHANGE OF PLEADER

IN THE COURT OF       

A. B. or  
in const  
C. D. or

TO THE REGISTRAR OF THE COURT

Take notice that I, A. B. (or C. D.), have hitherto employed as my pleader G. H. of        in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is J. K. of—

A. B. (or C. D.)

-----  
No. 180.

**MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.**

Hours of attendance at the office of the Registrar (*place of office*) from *ten* till *four* except on (*here insert the day on which the office will be closed*), when the office will be closed at *one*.

# THE BENGAL TENANCY ACT, 1885.

## CONTENTS.

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CHAPTER	I.—PRELIMINARY.
"	II.—CLASSES OF TENANTS.
"	III.—TENURE-HOLDERS.
	<i>Enhancement of rent.</i>
	<i>Other incidents of tenures.</i>
"	IV.—RAIYATS HOLDING AT FIXED RATES.
"	V.—OCCUPANCY-RAIYATS.
	<i>General.</i>
	<i>Incidents of occupancy-right.</i>
	<i>Enhancement of rent.</i>
	<i>Reduction of rent.</i>
	<i>Price-lists.</i>
	<i>Commutation.</i>
"	VI.—NON-OCCUPANCY RAIYATS.
"	VII.—UNDER-RAIYATS.
"	VIII.—GENERAL PROVISIONS AS TO RENT.
	<i>Rules and presumptions as to amount of rent.</i>
	<i>Alteration of rent on alteration of area.</i>
	<i>Payment of rent.</i>
	<i>Receipts and accounts.</i>
	<i>Deposit of rent.</i>
	<i>Arrears of rent.</i>
	<i>Produce-rents.</i>
	<i>Liability for rent on change of landlord or after transfer of tenure or holding.</i>
	<i>Illegal cesses, &amp;c.</i>
"	IX.—MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.
	<i>Improvements.</i>
	<i>Acquisition of land for building and other purposes.</i>
	<i>Sub-letting.</i>
	<i>Surrender and abandonment.</i>
	<i>Sub-division of tenancy.</i>
	<i>Ejectment.</i>
	<i>Measurements.</i>
	<i>Managers.</i>



**CHAPTER X.—RECORD OF RIGHTS AND SETTLEMENT OF RENTS.**

„ **XI.—RECORD OF PROPRIETORS' PRIVATE LANDS.**

„ **XII.—DISTRAINT.**

„ **XIII.—JUDICIAL PROCEDURE.**

„ **XIV.—SALE FOR ARREARS UNDER DECREE.**

„ **XV.—CONTRACT AND CUSTOM.**

„ **XVI.—LIMITATION.**

„ **XVII.—SUPPLEMENTAL.**

*Penalties.*

*Agents and representatives of landlords.*

*Rules under Act.*

*Provisions as to temporarily-settled districts.*

*Rights of pasturage, &c.*

*Saving for conditions binding on landlords.*

*Savings for special enactments.*

*Construction of Act.*

**SCHEDULE I.—REPEAL OF ENACTMENTS.**

„ **II.—FORMS OF RECEIPT AND ACCOUNT.**

„ **III.—LIMITATION.**

# ACT NO. VIII OF 1885.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 14th March, 1885)*

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title. 1. (1) This Act may be called the Bengal Tenancy Act, 1885.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

Repeal. 2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

**Definitions.**

**3. In this Act, unless there is something repugnant in the subject or context:—**

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a District, and includes Government khas mahals and revenue-free lands not entered in any register.

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(3) "Tenant" means of a person who holds land under another person, and is, or but for a special contract, would be, liable to pay rent for that land to that person.

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(6) "Pay", "payable" and "payment," used with reference to rent, include "deliver", "deliverable" and "delivery".

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

(10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Bysak, where the Fasli or Amli year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

(13) "Succession" includes both intestate and testamentary succession.

(14) "Signed" includes "marked" when the person making the mark is unable to write his name ; it also includes "stamped" with the name of the person referred to.

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

## CHAPTER II.

### CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats, and
- (3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats ;

and the following classes of raiyats, (namely) :—

(a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

*Explanation.*—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(a) local custom ; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

### CHAPTER III.

#### TENURE-HOLDERS.

##### *Enhancement of rent.*

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rent payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years, not exceeding five, until the limit of the enhancement allowed has been reached.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Rent once enhanced may not be altered for fifteen years.

*Other incidents of tenures.*

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected;

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or usufructuary\* mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(a) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or\* when a mortgage of a permanent tenure other than an usufructuary mortgage thereof, is foreclosed; the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure\* or making a decree or order absolute for the foreclosure require the purchaser to pay into Court or mortgagee\* the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale or final foreclosure on the landlord as may be prescribed.

(2) When the sale has been confirmed\* or the decree or order absolute for the foreclosure has been made the Court shall send to the Collector the landlord's fee and a notice of the sale\* or final foreclosure in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

## CHAPTER IV.

### RAIYATS HOLDING AT FIXED RATES.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

## CHAPTER V.

### OCCUPANCY-RAIYATS.

#### *General.*

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed, for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is,

(4) Land held by two or more co-sharers as a raiyat<sup>1</sup> holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

21. (1) Every person who is settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

Settled raiyats to have  
occupancy-rights-

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

Effect of acquisition of  
occupancy-right by land-  
lord.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(3) A person holding land as an *ijarádár* or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his *ijará* or farm.

*Explanation.*—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in *ijará* or farm.

#### *Incidents of occupancy-right.*

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Rights of raiyat in res-  
pect of use of land.

Obligation of raiyat to  
pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.



Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of occupancy-right on death.

#### *Enhancement of rent.*

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(a) the contract must be in writing and registered ;

(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

Provided as follows—

(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely) :—

(a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate ;

(b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;

(c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent ;

(d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

*Explanation.*—“ Fluvial action ” includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court ;

(b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorise in that behalf by rules made under section 392 of the said Code ;

(c) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate ; and whenever it is found that by local custom and description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom ;

(d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of

comparison : provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period ;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

Rules as to enhancement  
on ground of landlord's im-  
provement.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;

(b) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement  
on ground of increase in  
productive powers due to  
fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) the Court shall not take into account any increase which is merely temporary or casual ;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Enhancement by suit to  
be fair and equitable.

36. If the Court

Power to order progres-  
sive enhancement.

passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual ; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

Limitation of right to  
bring successive enhance-  
ment-suits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

*Reduction of rent.*

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely) :—

(a) on the ground that the soil of the holding has without the fault of the riyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

*Price-lists.*

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of the staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the lists.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

*Commutation.*

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity ;

(b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available ; and

(c) the charges incurred by the landlord in respect of irrigation under the system of the rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

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## CHAPTER VI.

### NON-OCCUPANCY-RAIYATS.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46 :

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Grounds on which non-occupancy-raiyat may be ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one, or more of the following grounds, and not otherwise, (namely):—

- (a) on the ground that he has failed to pay an arrear of rent ;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rent generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of "admitted to occupation."

## CHAPTER VII.

### UNDER-RAIYATS.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely) :—

Limit of rent recoverable from under-raiyats.

(a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent. ; and

(b) in any other case—twenty-five per cent.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(a) on the expiration of the term of a written lease ;

(b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

## CHAPTER VIII.

### GENERAL PROVISIONS AS TO RENT.

#### *Rules and presumptions as to amount of rent.*

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Rules and presumptions as to fixity of rent.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement :

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent, shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural amount of rent and conditions of holding. he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

*Alteration of rent on alteration of area.*

Alteration of rent in respect of alteration in area

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made; and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(c) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.



(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

*Payment of rent.*

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Time and place for payment of rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

*Receipts and accounts.*

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment;

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

#### *Deposit of rent.*

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due, and

in case (d) of that section, by the person entitled to the rent.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

#### *Arrears of rent.*

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

#### *Produce-rents.*

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

(a) if either the landlord or the tenant neglects to attend either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

70. (1) When a Collector appoints an officer under the last foregoing

Procedure where officer appointed.

section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, no application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest-crop of the same description appraised in the neighbourhood on similar land for that harvest.

*Liability for rent on change of landlord or after transfer of tenure or holding.*

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

*Illegal cesses, &c.*

74. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwáb, &c., illegal.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

## CHAPTER IX.

### MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

#### *Improvements.*

76. (1) For the purposes of this Act, the term "improvement", used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto; and

(f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain

Right to improve-  
ments in case of non-oc-  
cupancy-holding.

and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

80. (1) A landlord may, by application to such Revenue-officer as the

Registration of landlord's  
improvements.

Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

81. (1) If any landlord or tenant of a holding desires that evidence

Application to record  
evidence as to improve-  
ment.

relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceedings between the landlord and tenant or any persons claiming under them.

82. (1) Every raiyat who is ejected from his holding shall be entitled

Compensation for rai-  
ya's improvements.

to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.



(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement ;

(b) to the condition of the improvement, and the probable duration of its effects ;

(c) to the labour and capital required for the making of such an improvement ;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement ; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

#### *Acquisition of land for building and other purposes.*

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

*Sub-letting.*

Restrictions on sub-letting. 85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

*Surrender and abandonment.*

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely :—

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

#### *Sub-division of tenancy.*

Division of tenancy not binding on landlord without his consent.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

#### *Ejectment.*

No ejectment except in execution of decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

#### *Measurements.*

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

(a) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section,  
Power for Court to order tenant to attend and point out boundaries. the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding  
Standard of measurement. between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

### *Managers.*

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,  
Power to call upon co-owners to show cause why they should not appoint a common manager.

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager;

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

94. If the co-owners fail to show cause as aforesaid within one month  
Power to order them to appoint a manager if cause is not shown. after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his

satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

96. The Local Government may nominate a person for any local area

Power to nominate person to act in all cases under clause (b) of last section.

to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of the last foregoing section; and, when any person has been so nominated,

no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

97. In any case in which the Court of Wards undertakes under section 95

The Court of Wards Act, 1879, applicable to management by Court of Wards.

the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary

Provisions applicable to manager.

or percentage of the money collected by him as manager, or partly in one way and partly in the

other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removeable by the order of the District Judge, and not otherwise.

99. When an estate or tenure has been placed under the management

Power to restore management to co-owners.

of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management

of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

100. The High Court may, from time to time, make rules defining the

Power to make rules.

powers and duties of managers under the foregoing sections.

## CHAPTER X.

## RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

101. (1) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following (namely) :—

(a) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs ;

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(c) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards ; and

(d) where a settlement of revenue is being made in respect of the local area.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

(a) the name of each tenant ;

(b) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;

(c) the situation, quantity and boundaries of the land held by him ;

(d) the name of his landlord ;

(e) the rent payable ;

(f) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise ;

(g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;

(h) the special conditions and incidents, if any, of the tenancy.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (d), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

105. (1) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may

settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

Undisputed entries in record to be presumptive evidence. 109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Time at which settlement of rent is to take effect,

of the record.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(a) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

112. (1) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

113. When the rent of a tenure or holding is settled under this chapter,

Period for which rents as settled are to remain unaltered. it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

114. Where an order is made under this chapter in any case except

Expenses of proceedings under chapter.

under section 101, sub-section (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or



such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Presumption as to fixity of rent not to apply where record has been prepared.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

## CHAPTER XI.

### RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khāmār, nij or nij-jot, and in Behar as zirāt, nij, sir or kamāt, where any such land is held under a lease for a term of years or under a lease from year to year.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

(a) land which is proved to have been cultivated as khamar, zirāt, sir, nij, nij-jot or kamāt by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village usage as proprietor's khamar, zirāt, sir, nij, nij-jot or kamāt.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

## CHAPTER XII.

### DISTRAINT.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

(a) any crops or other products of the earth standing or ungathered on the holding ;

(b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead :

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act ; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed ; or

(3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Form of application.

122. (1) Every application under the last foregoing section shall specify—

(a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification ;

(b) the name of the tenant ;

(c) the period in respect of which the arrear is claimed ;

(d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable ;

(e) the nature and approximate value of the produce to be distrained ;

(f) the place where it is to be found, or such other particulars as may suffice for its identification ; and

(g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

Procedure on receipt of application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court :

Execution of order for distraint.

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

Service of demand and account.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to reap, &c., produce.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

Provided that where the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable ; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Manner of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs; and in default of such payment the property shall be put up again and sold.

Payment of purchase-money.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to be given to purchaser.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

Conflict between rights of superior and inferior landlords.

same property, the right of the superior landlord shall prevail.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which order of attachment or sale was issued.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that any person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under this section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

## CHAPTER XIII.

### JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules,

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

144. (1) The cause of action to all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

145. Every naib or gumashta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

148. The following rules shall apply to suits for the recovery of rent:—

(a) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit:

(b) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification:

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served :

(e) a written statement shall not be filed without the leave of the Court :

(f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not :

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears :

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea, unless the defendant pays into Court the amount so admitted to be due.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it has been given by the plaintiff or the third person as the case may be.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or an appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or



(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government, to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity ; and may pass such order as the District Judge thinks fit.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following ; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following ; but nothing in this section shall prevent the Court fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against forfeitures. 155. (1) A suit for the ejectment of a tenant, on the ground—

(a) that he had used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding :—

(a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;

(b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage ;

(d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely) :—

(a) the situation, quantity and boundaries of the land ;

(b) the name and description of the tenant thereof (if any) ;

(c) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure ; and

(d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

## CHAPTER XIV.

## SALE FOR ARREARS UNDER DECREE.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances":

Provided as follows :—

(a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;

(b) the power to annul shall be exercisable only in manner by this chapter directed.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter :—

(a) any under-tenure existing from the time of the Permanent Settlement ;

(b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;

(c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;

(d) any right of occupancy ;

(e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;

(f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

(g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and registered and notified incumbrance.

161. For the purposes of this chapter—

(a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section ;

(b) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under

Application for sale of tenure or holding.

section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application for the order of attachment and the proclamation of sale to be issued simultaneously, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances ; and

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When a tenure or holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances ; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement ; and upon that day the tenure or holding shall be put up to auction and sold with powers to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale-proceeds.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of

those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say :—

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale ;

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;

(c) if there remains a balance after those sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale ;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him ;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent ; and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

172. When a tenure or holding is advertised for sale under this

Inferior tenant paying into Court may deduct from rent.

chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of

the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale set aside :

Provided that, if a judgment applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could otherwise lawfully create.

## CHAPTER XV.

## CONTRACT AND CUSTOM.

Restrictions on exclu-  
sion of Act by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land ;
- (b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23 ;
- (c) take away the right of a raiyat to surrender his holding in accordance with section 86 ;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage ;
- (e) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act ;
- (f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52 ;
- (g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 ; or
- (h) affect the provisions of section 67 relating to interest payable on arrears of rent :

Provided as follows :—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat ;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.



179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

Permanent mukarrari leases.

180. (1) Notwithstanding anything in this Act, a raiyat—

Utbandi, chur and dearah lands.

(a) who in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as chur or dearah, shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of utbandi and for the time being held under that custom, or

in case (b), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

181. Nothing in this Act shall affect any incident of a ghatwali or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service tenures.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Homesteads.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

#### *Illustrations.*

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

## CHAPTER XVI.

## LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Portions of the Indian Limitation Act not applicable to such suits, &c.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

## CHAPTER XVII.

## SUPPLEMENTAL.

*Penalties.*

Penalties for illegal interference with produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(a) distrains or attempts to distrain the produce of a tenant's holding, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

*Agents and representatives of landlords.*

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf, by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

#### *Rules under Act.*

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits ;  
(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875 ; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil ; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

#### *Provisions as to temporarily-settled districts.*

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular time is reserved in the instrument of settlement.

cular rate of rent has been expressly recognized in settlement-proceedings by a revenue-authority empowered by the Government to make definitively or confirm settlements.

192. When a landlord grants a lease, or makes any other contract,

Power to alter rent in case of new assessment of revenue. . . . .  
purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

*Rights of pasturage, &c.*

193. The provisions of this Act applicable to suits for the recovery of

Rights of pasturage for-  
est-rights, &c.

arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights,

rights over fisheries and the like.

*Saving for conditions binding on landlords.*

194. Where a proprietor or permanent tenure-holder holds his estate

Tenant not enabled by  
Act to violate conditions  
binding on landlord.

or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle

any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

*Savings for special enactments.*

Savings for special en-  
actments,

195. Nothing in this Act shall affect—

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of Government revenue;

(d) any enactment relating to the partition of revenue-paying estates;

(e) any enactment relating to patni tenures, in so far as it relates to those tenures; or

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

*Construction of Act.*

Act to be read subject to  
Acts hereafter passed by  
Lieutenant-Governor of  
Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

## SCHEDULE I.

(See section 2.)

## REPEAL OF ENACTMENTS.

*Regulations of the Bengal Code.*

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793...	A Regulation for re-enacting with modifications and amendments the rules for Decennial Settlement of the Public Revenue payable from the lands of the zemindars, independent taluqdars and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805...	A Regulation for the settlement and collection of the Public Revenue in the zilla of Cuttack, including the parganas of Pataspur, Kummadihour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812...	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812...	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

*Acts of the Bengal Council.*

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.)	The whole Act.
IV of 1867...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VII of 1869...	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879...	An Act to define and limit the powers of Settlement-officers.	The whole Act,

*Act of the Governor General in Council.*

X of 1859...	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.
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## SCHEDULE II.

## FORMS OF RECEIPT AND ACCOUNT.

(See section 56 and 57).

## FORM OF RECEIPT.

## PARTICULARS OF THE HOLDING (LANDLORD'S PORTION.)

1. Serial number of Receipt
2. Estate ; Village ; Thana
3. Tenant's name , Son of
4. Particulars of the holding—

*Nukdi*, Bighas ; rent Rs.*Baouli*, Bighas ; Maunds or Rs.

{ Julkur, Rs.

{ Bunkur, Rs.

{ Phulkur, Rs.

{ Road Cess, Rs.

Government Cesses { Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent.

## FORM OF RECEIPT.

## PARTICULARS OF THE HOLDING (TENANT'S PORTION.)

1. Serial number of Receipt
2. Estate ; Village ; Thana
3. Tenant's name , Son of
4. Particulars of the holding—

*Nukdi*, Bighas ; rent Rs.*Baouli*, Bighas ; Maunds ; or Rs.

{ Julkur, Rs.

{ Bunkur, Rs.

{ Phulkur, Rs.

{ Road Cess, Rs.

Government Cesses { Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

- (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.
- (2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.



**FORM OF ACCOUNT.**

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c.)	Bighas	Rate	Rs. A. P.
<i>Nukdi</i>					
Government Cesses					
			Bighas	Maunds	Rs. A. P.
<i>Baouli</i>					
	Julkur	...	...	...	...
	Bunkur	...	...	...	...
	Phulkur	...	...	...	...
				Maunds	Rs. A. P.
4.	Demand of the year	...	...	...	...
5.	Balance of former years (Bakaya)	...	...	...	...
6.	Total demand (current and arrear)	...	...	...	Rs. A. P.
7.	Paid each on account of	<div> <div>Current demand</div> <div>Arrear demand</div> </div>	...	...	...
8.	Paid in kind	Maunds	...	...	...
9.	Balance outstanding at end of year				Rs. A. P.
10.	Signature of the Landlord or his authorized Agent				

FORM OF ACCOUNT.

1. Year			
2. Tenant's name			
3. Particulars of holding—(area, rent, &c.)			
	Bighas	Rate	Rs. A. P.
<i>Nukdi</i>			
Government Cesses			
	Bighas	Maunds	Rs. A. P.
<i>Baouli</i>			
Julkur	...	...	...
Bunkur	...	...	...
Phulkur	...	...	...
		Maunds	Rs. A. P.
4. Demand of the year	...	...	...
5. Balance of former years (Bakaya)		...	...
			Rs. A. P.
6. Total demand (current and arrear)		...	...
7. Paid each on account of	<div> <div>Current demand</div> <div>Arrear demand</div> </div>		
		Maunds	
8. Paid in kind	...	...	...
9. Balance outstanding at end of year			Rs. A. P.
10. Signature of the Landlord or his authorized Agent.			



## SCHEDULE III.

## LIMITATION.

(See section 184.)

## PART I.—Suits.

Description of suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
2. For the recovery of an arrear of rent—		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months	The date of the service of notice of the deposit.
(b) in other cases	Three years	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years	The date of dispossession.

## PART II.—Appeals.

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the commissioner.	Thirty days	The date of the order appealed against.

SCHEDULE III.—(*Concluded.*)LIMITATION.—(*Concluded.*)PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
<p>6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.</p>	Three years	<p>(1) the date of the decree or order; or  (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or  (3) where there has been a review of judgment, the date of the decision passed on the review.</p>



# EXTRACTS

FROM

## COLEBROOKE'S DAYA BHAGA.

### CHAPTER I.

*Partition of Heritage defined and explained. Two periods of partition of the Father's wealth.*

1. PARTITION of heritage, on the subject of which various controversies have arisen among intelligent persons (not fully comprehending the precepts of *Menu* and the rest) should be explained for their information. Hear it, O ye wise !

2. First, the term Partition of Heritage (*dáyabhága*) is expounded : and, on that subject, *Náreda* says, " Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise Partition of Heritage."

3. What came from the father is "paternal:" and this signifies property arising from the father's demise. The expressions "paternal" and "by sons" both indicate any relation : for the term "partition of heritage" is used for a division of the goods of any relation by any relatives. Accordingly *Náreda*, having premised "partition of heritage" as a topic of litigation, shows, under that head of actions, the distribution of effects left by the mother and the rest. So *Menu*, likewise, premising inheritance, but without employing the word father or any other specific term, propounds the division of effects of any relative.

4. The term "heritage," by derivation, signifies "what is given." However, the use of the verb (*dá*) is here secondary or metaphorical ; since the same consequence is produced, namely that of constituting another's property after annulling the previous right of a person who is dead, or gone into retirement, or the like. But there is no abdication of the deceased and the rest in regard to the goods.

5. Therefore, the word "heritage" is used to signify wealth, in which property, dependent on relation to the former owner, arises on the demise of that owner.

6. Is the partition of heritage a splitting of the divided thing into integral parts ? Or does partition consist in the chattel's not being united with the heritage of a co-heir ? The first position is not correct ; for the heritage itself would be destroyed. Nor is the second accurate : for, though goods be conjoined, it may be said, "this chattel, which was before parted, is not my "property, but my brother's".

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the co-heirs, through the sameness of their relation, over all the goods. For relation, opposed by the co-existent claim of another relative, produces a right (determinable by partition) to

portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the whole of the paternal estate; and it would be useless, as there would not result a power of aliening at pleasure.

8. The answer is: Partition consists in manifesting [or in particularizing] by the casting of lots or otherwise, a property which had arisen in lands or chattels, but which extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

9. Or partition is a special ascertainment of property, or making of it known [by reference of a particular share to a particular person.]

10. Even in the case where a single article, as a female slave, cow, or the like, is common to many, the property is severed by separate use, in carrying burdens, or in milking, during specific periods, in turn, as directed by *Vṛthaspati*. "A single female slave should be employed on labor in the houses [of the several co-heirs] successively, according to the number of shares:—and water of wells or ponds is drawn for use according to need [without stint]—such property [as is regularly not divisible] should be distributed by equitable adjustment; else it would be useless [to the owner.]" These three half stanzas occur in many places, [as quotations from this author,] though not found in their regular order [in his Institutes of Law.]

11. Does it not follow from the text of *Nāreda*, ("let sons regularly divide "the wealth when the father is dead") which authorizes sons to divide their father's effects after his decease, that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the goods of a stranger.

12. The answer is this: since it is the practice of people to call an estate their own, immediately after the demise of their father or other predecessor; and the right of property is acknowledged to vest without partition in the case of an only son; the demise of the relative is the cause of property. Consequently there is no room for any misconstruction.

13. Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth therefore, as the act of the son, rightly deemed his mode of acquisition? and have not sons, consequently, a proprietary right, during their father's life, [even without his being degraded or otherwise disqualified;] and not by reason of his demise? and, therefore, is it declared "in some cases birth alone [is a mode of acquisition,] "as in the instance of a paternal estate."

14. That is not correct: for it contradicts *Menu* and the rest. "After the [death of the] father and the mother, the brethren, being assembled, must divide equally the paternal estate: for they have not power over it, while their parents live."

15. This text is an answer to the question, why partition among sons is not authorized, while their parents are living: namely "because they have not ownership at that time."

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son: for there is no evidence of property then vested; but, in the other instance, dependence is rightly supposed to be meant, since property is suggested by the phrase "what they earn" or acquire.

17. Besides, it would contradict revealed law, if these persons had not ownership even in that which is by them earned; since religious rites,

enjoined by holy writ, and which must be effected by means of their own wealth, would be prevented.

18. *Dévala*, too, expressly denies the right of sons in their father's wealth. "When the father is deceased, let the sons divide the father's wealth : for sons has not ownership while the father is alive and free from defect."

19. Besides, if sons had property in their father's wealth, partition would be demandable even against his consent ; and there is no proof, that property is vested by birth alone ; nor is birth stated in the law as means of acquisition.

20. In some places it is alleged : but there, by the mention of birth the relation of father and son, and the demise of the father are mediately indicated as causes of property.

21. The right of one may consistently arise from the act of another : for an express passage of law is authority for it ; and that is actually seen in the world, since, in the case of donation, the donee's right to the thing arises from the act of the giver ; namely, from his relinquishment in favor of the donee who is a sentient person.

22. Neither is property created by acceptance ; since it would follow, that the acceptor was the giver : for gift consists in the effect of raising another's property ; and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificer ; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed a sacrifice. Besides the word gift occurs in passages of law as signifying something antecedent to acceptance.

23. Is not receipt acceptance ? for the affix, in the word *swicāra*, implies a thing becoming what it before was not ; and the act of making his own (*swan curvān*) what before was not his, constitutes appropriation or acceptance (*swicāra*.) How then can property be antecedent to that ?

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own, rendered liable to disposal at pleasure : and such is the meaning of the term 'acceptance' or 'appropriation.' From its association with teaching, and assisting at sacrifices, receipt (*pratigraha*) is, without question, a mode of acquisition, though it do not immediately create property : for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward.

25. Or the survival of the son, at the time of his father's demise, may constitute his acquisition. Besides, in the case of goods left by a brother or other relative, the property of the rest of the brethren or other heirs, must, however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his decease.

26. Hence [that is, because property is not vested in sons, while the father lives, or because property is not by birth, but by survival, or because the demise of the ancestor is a requisite condition,] the passage before cited, beginning with the words "after the [death of the] father," being intended to declare property vested at that period, [namely at the moment of the father's decease] recites partition which, of course, then awaits the pleasure [of the successor.] For it cannot be a precept, since the same result [respecting the right of partition, at pleasure,] was already obtained [as the necessary consequence of a right of property.]

27. Nor can it be a restrictive injunction. For, as that is contrary to the text of *Menu*. "Either let them thus live together; or let them dwell apart for the sake of religious merit;" and as it produces visible consequences *only* [not any unseen or spiritual result,] it can neither be an injunction for an *immediate* partition, nor a limitation of the time.

28. Besides, partition would be admissible, only at the moment immediately following the father's decease and not at any later period; for there is not in this instance, as in that of a sacrifice on the birth of a child, an objection analogous to the hazard of the new born infant's life: and partition to be made at any time after the father's demise, while the sons live, and at their pleasure, is already obtained [as a necessary result of obvious reasoning, without need of a special precept for the purpose.]

29. Therefore, the text of *Menu* must be argued [by you] to intend the prohibiting of partition, although the son's right subsist during the life of the father. But that is not maintainable. For it would thus bear an import not its own.

30. Hence the texts of *Menu* and the rest [as *Dévala* (§ 18)] must be taken as showing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased. One position is conveyed by the terms of the text; the other by its import.

31. Mere demise is not exclusively meant: for that intends also the state of a person degraded, gone into retirement, or the like; by reason of the analogy, as occasioning an extinction of property.

32. Accordingly *Naréda* says: "When the mother is past child-bearing, and the sisters are married, or if the father be lost, or no longer an householder, or if his temporal affections be extinct.

33. "Lost" signifies degraded: "no longer a house-holder," having quitted the order of a house-holder. If the reading be "when he is exempt from death," then the sense is "when being exempt from death (that is alive,) he is devoid affections." The variation in the reading is unfounded.

34. Here also, to show, that the sons' property in their father's wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explanatorily: for the recital is conformable to the previous knowledge, and the right of ownership suggests that knowledge.

35. Since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and concurrence of heirs, suggested as one case of partition, is recited explanatorily in the text "the brethren being assembled &c." Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between co-heirs.

36. Is not the eldest son alone entitled to the estate, on the demise of the co-heirs? and not the rest of the brethren? for *Menu* says: "The eldest brother may take the patrimony entire; and the rest may live under him, as under their father." And here eldest intends him who rescues his father from the hell called *Put*; and not the senior survivor. "By the eldest, as soon as born, a man becomes father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage. That son alone, on whom he devolves his debt, and through whom he tastes immortality, was begotten from a sense of duty: others are considered as begotten from love of pleasure."

37. Not so : for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus *Nāreda* says : "Let the eldest brother, by consent, support the rest, like a father ; or let a younger brother, who is capable, do so : the prosperity of the family depends on ability." By consent of all, even the youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For *Menu* declares : "Either let them thus live together, or let them live apart for the sake of religious merit : since religious duties are multiplied apart, separation is, therefore, lawful." By the terms "together or apart," and "for the sake," he shows it optional at their choice.

38. Thus there are two periods of partition : one, when the father's property ceases ; the other by his choice, while his right of property endures.

39. But three periods must not be admitted ; one, when a father dies ; another, when he is devoid of worldly regards, and the mother's courses have ceased ; and a third by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mother's courses be joined, as a condition, with the extinction of the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished ; ) since the cessation of the mother's courses cannot yet have happened [while she is still between thirty and forty years of age :] for the nubile age, as ordained by *Menu*, is twelve years for a girl to be married to a man aged thirty, and eight years for one to be espoused by a man aged twenty-four ; and the age prescribed for entering into another order is fifty years.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate ; that is denied ; for it might be thence inferred, that partition would not take place, although the father were a degraded person, if he were not at the same time devoid of temporal regard.

41. But, if this be pronounced to be another period of partition, then four distinct periods would arise ; 1. the demise of the father ; 2. his degradation ; 3. his disregard of secular objects ; 4. his own choice.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age &c.] has been asserted through ignorance of express passages of law [to the contrary.] Thus *Hārīta* says : "While the father lives, sons have no independent power in regard to the receipt, expenditure and bailment of wealth. But, if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases". So *Sancho* and *Lichita* explicitly declare : "If the father be incapable, let the eldest manage the affairs of the family, or, with his consent, a younger brother conversant with business. Partition of the wealth does not take place, if the father be not desirous of it ; when he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease. Let the eldest, like a father, protect the goods of the rest ; for [the support of] the family is founded on wealth. They are not independent, while they have their father living, nor while the mother survives."

43. These two passages, forbidding partition when the father is incapable of business, or when he labours under a lasting disorder, direct, that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited, therefore, runs "not if the



father desire it not ;" and it was by mistake that it was written "if he be incapable of business, partition of the wealth takes place &c."

44. Therefore two periods only are rightly affirmed : one, when property ceases by the owner's degradation from his tribe, disregard of temporal matters, or actual demise ; the other by the choice of the father, while his property still subsists.

45. The condition "when the mother is past child-bearing," regards wealth inherited from the paternal grand-father. Since other children cannot be borne by her, when her courses have ceased, partition among sons may then take place : still, however, by the choice of the father. But, if the hereditary estate were divided, while she continued to be capable of bearing children, those, born subsequently, would be deprived of subsistence. Neither would that be right : for a text expresses, "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support : and the dissipation of their hereditary maintenance is censured."

46. It is because there are two periods of partition, in the case of the father's wealth, that *Menu*, *Gautama* and others, avoid the word "dead," and use the term "after." Since the father's right then ceases, the term "after" is employed to express that sense. Hence this is one period of partition. Another, regulated by his choice, while he does retain worldly affections, is indicated by the text "a son born after the division &c."

47. The condition "and when the sisters are married" does not intend a distinct period, but inculcates the necessity of disposing of them in marriage : as the text of *Nāreda* "What remains of the paternal inheritance over and above the father's obligations and after payment of his debts, may be divided by the brethren ; so that their father continue not a debtor ;" is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

48. From that text of *Nāreda*, it results, that co-heirs making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment of debts. Accordingly *Yānyawalkya* propounds the distribution of a mother's wealth, remaining over and above her debts. "Daughters share the residue of their mother's property, after payment of her debts : and the male issue, in default of daughters." This will be fully considered under the head of debt.

49. Or the restriction may signify, that the mother's effects should be shared by the sons, if their sisters have been given in marriage : but, if they be unmarried, the inheritance is held in common with them. This will be explained in due time.

50. It is thus established [by reasoning, as well as by positive law.] that two periods exist for the partition of wealth appertaining to a father [whether acquired by himself or inherited from ancestors.]

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CHAPTER II.

*Partition, made by a Father,—of property ancestral,—and of his own acquisitions.*

1. In the next place, the period for the distribution of an estate left by a paternal grandfather or other ancestor, is propounded. On that subject *Vṛkhaspati* says, "On the demise of both parents, participation among brothers is allowed: and even while they are both living, it is right if the mother be past child-bearing."

2. This passage does not relate to the father's wealth; for the text, concerning the exclusive right of a son born after partition, would be without relevancy: since there can be no son born when the woman is past child-bearing. Nor can it be supposed to relate to the mother's goods: for she would thus be stript of her wealth. The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other ancestor.

3. Neither can the circumstance of her being past child-bearing, be a cause of partition, independently of choice: for there can be no partition without a will to make it.

4. If it be asked, 'admitting a choice, whose must it be?' The answer is, 'the father's;' as deduced from the text of *Gautama*: "After the [demise of the] father, let sons share his estate. Or while he lives, if the mother be past child-bearing, and he desire partition."

5. Hence [since such is the import of *Vṛkhaspati's* text] the decease of both parents is one period [for the partition of the grandfather's estate:] and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought [in strictness] to be made only after the decease of the mother.

6. The mention of the mother's demise, does not here imply partition of her goods: since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person; for the legality of partition in the instance of survival is there propounded, (as appears from the word even,) in the same case, in which the demise of both parents was declared a reason of distribution. The death of the mother must not be expounded as relative to her goods. This subject will be fully considered in its place.

7. Therefore the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor, and the other is by the choice of the father when the mother is past child-bearing.

8. A division of it does not take place without the father's choice: since *Menu*, *Nāreda*, *Gautama*, *Bāudhāyana*, *Sancha* and *Lichita*, and others, (in the following passages, "they have not power over it," "they have not ownership while their father is alive and free from defect," "while he lives, if he desire partition," "partition of heritage by consent of the father," "partition of the estate being authorized while the father is living" &c.) declare without restriction, that sons have not right to any part of the estate, while the father is living, and that partition awaits his choice: for these texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor.

9. The text of *Yājñyavalkya* ("The ownership of father and son is the same in land which was acquired by his father, or in a corrody, or in chattels,") properly signifies, as rightly explained by the learned *Udyōta*, that, 'when one of two brothers, whose fathers is living, and who have not received allotments, dies leaving a son; and the other survives; and the father afterwards deceases; the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate: so have his sons, if he be dead. There is not in that case, any distinction founded on greater or less propinquity; for both equally confer a benefit by offering a funeral oblation of food, as enjoined at solemn obsequies.' Such is the author's meaning.

10. Accordingly a great-grandson, whose father [as well as grandfather] is deceased, is in like manner an equal claimant with the son and grandson. For he likewise presents a funeral oblation.

11. But, if sons had ownership, during the life of their father, in their grandfather's estate, then, should a division be made between two brothers one of whom has made issue and the other has none, the children of that one would participate, since [according to your opinion] they have equally ownership.

12. It should not be objected that such cannot be the meaning of the text, as not being the subject premised: for the case of grandsons by different fathers, was the proposed subject.

13. A "corrody" (§ 9) signifies what is fixed by a promise in this form, "I will give that in every month of *Cartici*."

14. "Chattels."] From their association with land, slaves must be here meant.

15. Or the meaning of the text (§ 9) may be, as set forth by *Dhārēswara*, 'A father, occupied in given allotments at his pleasure, has equal ownership with his sons in the paternal grandfather's estate. He is not privileged to make an unequal distribution of it, at his choice, as he is in regard to his own acquired wealth.'

16. So *Vishnu* says, "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But, in the estate inherited from the grandfather, the ownership of father and son is equal."

17. This is very clear. When the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but not so, if it were property inherited from the grandfather; because they have an equal right to it. The father has not in such case an unlimited discretion.

18. Hence [since the text becomes pertinent by taking it in the sense above stated; or because there is ownership restricted by law in respect of shares, and not an unlimited discretion;] both opinions, that the mention of like ownership provides for an equal division between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected.

19. Other texts should be explained in the very same manner.

20. It is consequently true, [since the text above cited do not imply co-ordinate ownership,] that the father has his double share of wealth

inherited from the grandfather or other ancestor; and that a distribution takes place at the will of the father only, and not by the choice of his sons. •

21. "If the father recover paternal wealth, [seized by strangers, and] not recovered [by other sharers, not by his own father,] he shall not, unless willing, share it with his sons: for in fact it was acquired by him." In this passage, *Menu* and *Vishnu*, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of hereditary wealth not acquired [what is, recovered], by him. But here also, the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth, which he received: but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. The father has ownership in gems, pearls, and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions; and has power to distribute them unequally, as *Yājñavalkya* intimates, "The father is master of the gems, pearls, and corals, and of all [other moveable property:] but neither the father, nor the grandfather, is so of the whole immovable estate."

23. Since the grandfather is here mentioned, the text must relate to his effects. By again saying "all" after specifying "gems, pearls, &c.," it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land &c., but not of immovables, a corrody and chattels, [i. e., slaves.] Since here also it is said "the whole," this prohibition forbids the gift or other alienation of the whole, because [immovables and similar possessions are] means of supporting the family. For the maintenance of the family is an indispensable obligation; as *Menu* positively declares, "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore [let a master of a family] carefully maintain them."

24. The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning [if the gift of even a small part were forbidden.]

25. From the express mention of immovables, a prohibition is inferred by the analogy exemplified in the loaf and staff, against the gift or other transfer of a corrody or of slaves.

26. But, if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold or otherwise disposed of: as appears from the obvious sense of the passage; and because it is directed, that a man should by all means preserve himself.

27. It should not be alleged, that by the texts of *Vyāsa* ("A single parcener may not, without consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family." "Separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole, to give, mortgage, or sell it;") one person has not power to make a sale or other transfer of such property. For here also [in the very instance of land held in common,] as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure.

28. But the texts of *Vyāsa* (§ 27.) exhibiting a prohibition, are intended to show a moral offence: since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

29. So likewise other texts (as this, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them *should not be made* by him, unless convening all the sons,") must be interpreted in the same manner. For here the words "should" "be made" must necessarily be understood.

30. Therefore, since it is denied, that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.

31. Accordingly [since there is not in such case a nullity of gift or alienation.] *Nāreda* says: "When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business, and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."

32. We resume the subject. Thus, for the reasons before stated, since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous; and since it cannot be intended by the text (§ 9) to confer on sons a right to demand partition; that text must either be meant to prevent an unequal distribution depending solely on the father's pleasure, [according to *Dhārēswara's* interpretation; § 15] or it must intend the equal right of a nephew whose father is deceased, to share with his uncle; conformably with the other exposition [§ 9].

33. Thus [since sons have not power to require partition] a division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, that it is requisite, the mother should have ceased to be capable of bearing issue: whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the demise of the father, it takes place equally in the case of both sorts of property [the father's estate or the grandfather's] without distinction.

34. Therefore the periods of partition are two, even in the case of wealth inherited from ancestors.

35. In such case, if the father voluntarily make a partition with his sons, he may reserve for himself a double share of property ancestral. For *Vṛthaspati*, saying "The father may himself take two shares at a partition made in his life-time;" and *Nāreda*, "Let the father making a partition, reserve two shares for himself," do so ordain, without restriction.

36. Besides, a double share of the grandfather's wealth is the father's due by this [following] argument.

37. Deductions of a twentieth part (with the best of all the chattels,) and of half a twentieth, and of a quarter thereof, are propounded by a passage of *Menu*: ("The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost half of that; for the youngest a quarter of it,") and shares increased by one portion, by half of one, and by a quarter, are propounded by other passages of the same author: ("If a deduction be thus made, let equal shares of the

residue be allotted: but if there be no deduction, the shares must be distributed in this manner; let the eldest have a double share; and the next born, a share and a half; and the youngest sons each a share: thus is the law settled.") *Gautama* likewise, after directing, that "A twentieth part shall belong to the eldest, besides a pair [of goats or sheep,] a car, together with beasts that have teeth in both jaws, and also a cow and bull;" (i. e. a pair of goats, or the like, car with horses or other beasts having teeth in both jaws, and a bull together with a cow; all this shall belong to the eldest;) and after directing, that "Cattle blind of one eye, or aged, dwarfish, or disfigured, shall belong to the middlemost, if there be more than one;" (i. e., aged or old, dwarfish or stunted, disfigured or having a distorted tail; these shall appertain to the middlemost, provided the cattle be numerous;) and after further directing, that "A sheep, grain, iron, a house, and, together with a cart, one each sort of quadruped, shall be given to the youngest; all the residue shall be equally divided;" (i. e., a sheep and other things, as specified, shall be allotted to the youngest; but let the brethren divide equally the whole of the residue;) has by the following passage allotted a double share to the eldest: "Or let the first born have two shares, and the rest take one a piece."

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth. For the allotment of two shares is directed "if there be no deduction:" now a deduction could not be supposed in the case of an acquisition; and, since the middlemost and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion, [as a share and a quarter,] to them, would be incongruous, and the use of the term "eldest", &c., would be impertinent.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, *Menu* ordains, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for the woman." Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex, the author thereby intimates, that a male would have had a double share, [in right of his being eldest.

40. In regard to what is said, that as in the instance of the *Hólácá*, a passage of revelation to this effect, "The *Hólácá* ought to be performed," is assumed for the justification of the practice of celebrating that festival which is in use among the *Práchyas*; (for it can be sufficiently justified by such a passage; and one, containing the word *Práchya* or other restrictive term, need not be supposed, since the proof of it would be burdensome;) so, in this case likewise, a passage of revelation in these words, "Let the acquirer take a double share," must be inferred, and not one containing the word "eldest" or other restrictive term. That argument is not right; for, in the one case, the practice observed by the *Práchyas* can be justified by a general precept of revelation, which must be presumed to that end. It should not be alleged, that one containing the term *Práchya* must be supposed for the sake of justifying the omission of that festival by others than *Práchyas*. Omission, consisting in non-performance, is no fit reason for presuming a lost revelation. But, here, since the *Menu* and the rest use the word "eldest," a passage of scripture containing that term ought to be presumed to justify its insertion; not one exhibiting the word

"acquirer," since there is no necessity for assuming this: nor is there any special authority for the proof of one containing both terms. It should not be alleged, that, since it is necessary to suppose a revelation for the purpose of authorizing the acquirer's double share in other cases, that may be the origin of the law in this case also, for it is an easy conclusion, and the word "eldest" may signify the acquirer. The reverse is equally possible; for, if a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well as be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of facility, a supposed passage of scripture, containing three, four, or more terms, may be any how inferred from reasoning; and the terms of the whole law may be made to relate to it, by interpreting them according to analogy and metaphor; and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a sentence of memorial law, from which a passage of scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained; more should not be presumed. And such is the import of the reasoning, instanced under the head of *Hóládá*.

41. Accordingly [since primogeniture and acquisition are severally, and independently of each other, reasons for the allotment of a double share.] *Vasishtha*, having ordained a double share for the eldest brother, separately propounds the allotment of two shares to the acquirer. Thus, after premising "Partition of heritage among brothers," he says "Let the eldest take two shares;" and at no great distance adds: "He, amongst them, who has made an acquisition, may take a double portion of it." Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment, to be given to the eldest brother, would be impertinent.

42. The right of taking a double share, too, is not confined to the case of primogeniture. Thus *Vrthaspati* says: "The eldest by birth, by science, and by good qualities, shall obtain a double share of the heritage, and the rest shall share alike: but he is as a father to them." If the allotment of two shares were only in right of acquisition, the mention of birth, science, and good qualities, would be useless.

43. The double portion is applicable to the case of partition among whole brothers [or among half brothers only;] and the deduction of a twentieth part for the eldest is relative to partition among brothers of both the whole and the half blood. For *Vrthaspati* says: "All sons of regenerate men, born of women equal by class, should share alike after giving a deduction to the eldest."

44. Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers: and this is proper, for the elder brother has the greater weight among his brethren, from the circumstance of his being of the whole blood.

45. The deduction also of one in ten cows &c., must not be made. So *Menu* declares: "Among brothers successful in the performance of their duties, there is no deduction of the best in ten, though some trifle, as a mark of greater veneration, should be given to the first-born."

46. By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon

the property, and\*being the root of all connexion with the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own father's wealth? *Vṛhaspati*, extending to the eldest son the right to a double share because he is like a father, as expressed in a passage above cited (§ 42,) does thereby intimate a maxim, that the father shall have two shares: and the maxim is actually propounded by *Vṛhaspati*; for he ordains such an allotment in general terms: "The father may himself take two shares at a partition made in his life-time." So *Nāreda* says: "Let the father, making a partition, reserve two shares for himself; and the mother shall take an equal share with her sons, if her husband be deceased."

47. A father, distributing the goods, may take two shares for himself. The construction of the sentence is not, "A father, distributing his own goods, may take two shares:" for that would contradict the doctrine before stated.

48. Besides, if the father and son are to share equally the grandfather's wealth, [under texts declaratory of their similar or equal rights,] it must be affirmed, that as much as in the father's share, so much (in number and quantity,) is the son's: not, that the very same effects, and same in quantity, which are the father's, are also the son's: for thus the property would be in common; and it might be concluded, that like the goods of husband and wife, no partition thereof could take place.

49. Now, if the case were so, [that is, if sons were entitled to share with their father allotments of equal amount, while his property continued,] the eldest, together with his son, would have four shares, if two must be allotted to his son, at the same time that two are allotted to the eldest himself in right of primogeniture: and one share only would belong to another brother. Thus, if the eldest brother have many children, and equal portions must be assigned to them, as to their father, a mere trifle would remain for a younger brother, which would be in contradiction to great authorities.

50. As for the text of *Vṛhaspati*: "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and of son is ordained:" its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply, that the shares must be alike.

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers; [one the natural, and the other the adoptive parent.]

52. The passage, which declares that "the ownership of father and son is the same," has been already expounded (§ 9 &c.).

53. Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed, it is assuredly reasonable, that he should have an allotment twice as great as his own sons, in the same case in which he would have double the allotment of his brothers, because he was as a father to them, for it is through him, that his sons are connected with the hereditary property. But if he be not the eldest son of his father, he takes only an equal share with his sons.



54. That is not accurate. For, since a share and a half, or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit, that the father should have a double share, in right of pater-nity; and it is not proper on the part of yourself and the holy writers, to direct the equal participation of father and son in general terms.

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth; as appears from the circumstance, that the distribution of it follows his choice. The precept regarding that allotment would be superfluous, since he may, at his choice, have either more or less than two or than three shares. Nor can the text be restrictive, for it would contradict *Vishnu*, who says: "When a father separates his sons from himself, his own will regulates the distribution. But, in the estate inherited from the grandfather, the ownership of father and son is equal."

56. The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half, or two shares, or three, all that is permitted to him by the law: but not so, in the case of property ancestral.'

57. Accordingly *Hārīta* says: "A father, during his life distributing his property may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them."

58. By this text the father is authorized to distribute a small part, and to reserve the greatest portion of his wealth. "The order suitable to an aged man," intends retirement.

59. As for the text of *Sancha* and *Lichita*, "If he be son of one father (*écaputra*), he may allot two shares to himself," the sense of it is this 'The word *écaputra* means son of one man: it is not a compound epithet signifying one who has an, only son; for that mode of construction prevails less than the other. "A son of one man" is a true legitimate son. The father, being such, is entitled to a double share: not so one who is (*cshétraja*) issue of the soil, though he be the father of the family.' But the text before cited (§ 9), declaratory of the equal ownership of father and son, must be explained as intending a father who was (*cshétraja*) issue of the soil of wife.

60. The offspring of the soil is indeed son of two fathers. *Baudhāyana* declares him so: "The son who is begotten by another on the authorized wife of a man deceased, impotent, or distempered, is son of the soil. He is considered as son of two fathers, as partaking of both families, and as heir to the wealth and obsequies of both."

61. The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like, with the husband's consent, is termed (*cshétraja*) the son of the soil.

62. So *Nāreda* says: "The produce of seed, which is sown in a field with permission of a proprietor, is considered as belonging to both the owner of the seed and the proprietor of the soil."

63. Hence [since the compound epithet is a construction not to be preferred;] and because the term (*écaputra*) ought to be made significant in the passage in question, as an epithet of the subject, is confuted.



64. Besides, one, who continually explains in a vague sense, terms used by authors transcendently wise, as *Menu*, *Gautama*, *Dacsha* and the rest, only demonstrates his own unsettledness.

65. Thus the father has a double share even of wealth acquired by his own son. For the expression is general: "let him reserve two shares;" or "he may take two shares." *Cātyāyana* declares it very explicitly: "A father takes either a double share or a moiety, of his son's acquisition of wealth; and a mother also, if the father be deceased, is entitled to an equal portion with the son."

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. It must not be explained thus: 'From the acquisition of both son and wealth, the father becomes entitled to two shares; but from no acquisition of a son, the owner keeps the whole.' For it is admitted, that, when partition is made with brothers, one, who even has not got a son, takes two shares, as the gainer of the wealth: how then can he keep the whole? It must therefore be affirmed, that, if any relative exist, who is entitled to participate, the acquirer has two shares; but, if there be none, he keeps the whole: and thus the specific mention of father and son becomes unmeaning, like the singing of a drunkard. Besides, acquisition is an act causing property; and it is a contradiction to say that it does not produce property, since it has been expressly declared to do so [by the wise.] Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of a whole estate. The term acquisition would be therefore metaphorical in regard to sons, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.

68. It must not be argued, that the precept would be superfluous, since the son's right to a double share is demonstrable, because the wealth was acquired by him; and since the father's right to two shares is also deducible independently of this text; [and] their equal participation may be thence inferred. The precept is significant: since, without this text, there is no ground for concluding a father's right to two shares of his son's wealth.

69. Besides, if the term "acquisition of wealth" be interpreted as relating to the father's goods, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share. How then are only two cases stated? That it cannot intend a restriction [to those two cases] nor relate to the father's own goods, has been already shown [from two passages before cited:] and it is as fit that he should have a moiety of his son's acquired wealth, as it is that he should have two shares of such wealth.

70. Nor does the text intend his taking a moiety of two shares, or, in other words, a single share. For moiety and share being relative terms, imply a something of which they are parts: and, since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes the relative term "double share," in construction with "acquisition of wealth" in the ablative, is unexceptionable, it is also right to construe the word moiety with it; for the terms are contiguous. A moiety of the wealth, therefore, is meant; not a moiety of

two shares, or in other words a single share: for it would be improper, while the obvious term, "a single share," might have been used, to employ a term, which does not express that sense. A moiety of the wealth, then, is the right interpretation.

71. Here, the father has a moiety of the goods acquired by his son at the charge of his estate; the son, who made the acquisition, has two shares; and the rest, take one apiece. But, if the father's estate have not been used, he has two shares; the acquirer, as many; and the rest are excluded from participation.

72. Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety: for an increased allotment is granted to the eldest by science and other good qualities. But one destitute of such qualities has a double share in right merely of his paternity.

73. Therefore, the meaning of the texts is, that a father may reserve for himself two shares of wealth which has descended in succession [from ancestors,] or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be. But, of his own acquired wealth, he may reserve as much as he pleases.

74. Among his sons, he may make the distribution, either by giving [to the first born] or withholding [from him] the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution on his own acquired wealth, being desirous of giving more to one, as a token of esteem, on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favour by reason of his piety; the father, so doing, acts lawfully.

75. *Yājñyavalkya* declares it: "A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid]." So *Vṛihaspati*: "Shares which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised," *Nārada* likewise: "For such as have been separated by their father with equal, greater, or less allotments of wealth, that is lawful distribution: for the father is lord of all."

76. Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth. Accordingly *Vishnu* says, "When a father separates his sons, from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal."

77. As a superior allotment, in the form of a deduction, is indicated by a passage of *Yājñyavalkya*, ("When the father makes a partition, let him separate his sons, according to his pleasure; and either dismiss the eldest with the best share; or, if he choose, all may be equal sharers,") how is any other unequal distribution here ordained? The answer is, such cannot be the meaning, for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers, after the demise of the father.

78. Perhaps the text is propounded for the purpose of legalizing an equal distribution made by the father, without the authorized deductions? No: for then a less allotment only is declared lawful, as made by the father; and the word greater would be impertinent.

79. Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza ("let him separate his sons according to his pleasure,") becomes superfluous ; for that, which was to be declared, is fully specified in three other verses of that text. But, according to our interpretation, the phrase, "let him separate his sons according to his pleasure," relates to his own acquired wealth ; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is subsequently nothing superfluous.

80. Moreover, two modes of partition after the death of the father are actually declared by *Vṛhaspati* in these words : "Partition of two sorts is ordained for co-heirs : one, in the order seniority ; the other, by allotment of equal share." By saying "in the order of seniority," the author indicates specific deductions. Equal participation is the other mode. Now, since two sorts of mutual partition among brothers are thus expressly declared, there would be no distinction between that and a distribution made by a father.

81. So *Nāṛada* says : "The father, being advanced in years, may himself separate his sons ; either dismissing the eldest with the best share, or in any manner as his inclination may prompt."

82. The unequal distribution, here intended, appears evidently to be different from that, which consists in giving the best share to the first born ; since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may prompt ;" thereby distinctly authorizing any unequal distribution, which the father, for reasons beforementioned, may think proper to make.

83. But the text of *Nāṛada*, which expresses, that "A father, who is afflicted with disease, or influenced by wrath, or whose mind is endrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate ;" relates to the case where the father, through perturbation of mind occasioned by disease or the like, or through irritation against any one of his sons, or through partiality for the child of a favorite wife, makes distribution not conformable to law. Nevertheless, unequal partition is lawful, when grounded on (either of the four) reasons above-mentioned.

84. Thus *Cātyāyana* says : "But let not a father distinguish one son at a partition made in his life-time, nor on any account exclude one from participation without sufficient cause."

85. Let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause. [This does not relate to specific deductions :] for the distinguishing of sons by allotting to them the prescribed deductions [of a twentieth, and half or a quarter of a twentieth,] extends to many [viz., eldest, middlemost and youngest ;] and is not confined to one. One son should not be distinguished without cause. But, for a sufficient reason, it may be done. Since the meaning is "even one son." The distinguishing of one, [as here forbidden,] has no reference to specific deduction ; but intends a distribution made according to the father's mere pleasure, as before explained.

86. However, when sons request partition in the father's life-time, an unequal allotment should not be granted by him. *Menu* declares it, "Among undivided brethren if there be an exertion in common, the father shall on no account make an unequal distribution in such case."

87. But the regular deduction ought in this instance to be allowed by the father. For it is not of the nature of an unequal distribution; and the allotment of greater or less shares is alone forbidden.

88. Thus partition made by a father [has been explained.]

## CHAPTER V.

### *Exclusion from Inheritance.*

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception, competent heirs. On this subject *Apastamba* says, "All co-heirs, who are endued with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first born."

2. This passage is read by *Bálíca* in a confused manner and contrary sense: "But he who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father." That reading is unauthorized.

3. So "the heritable right of one who has been expelled from society, and his competence to offer oblations of food and libations of water, are extinct." One, who has been expelled from society, is a person excluded from drinking water in company.

4. So *Vrthaspati* says, "Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen, offering funeral oblations [to the owner,] as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently there is no use for one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son, who is devoid of science, courage, and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, is similar to urine and excrement."

5. *Apastamba* says, "A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated: not a son who acts otherwise, be he conversant even with the whole *Véda*."

6. "Since a son delivers his father from the hell called *put*, therefore he is named *puttra* by the self-existent himself." By this and similar passages, great benefits are stated, as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly *Menu* says, "All those brothers, who are addicted to vice, lose their title to the inheritance."

7. So [the same author:] "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf; as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb.]"

8. The impotent person is described by *Cátváyana*: "that man is called impotent, whose urine froths not, whose feces sink in water, and whose virile member is void of erection and of semen."

9. The term 'horn' is connected in construction with the words 'blind' and 'deaf.' One, who is incapable of articulating sounds, is dumb. An idiot is a person not susceptible of instruction.

10. *Yājñyavalkya* says, "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, [as well as others similarly disqualified,] must be maintained; excluding them, however, from participation." One, who cannot walk, is lame.

11. Although they be excluded from participation, they ought to be maintained, excepting however, the outcast and his son. That is taught by *Dēvala*: "When the father is dead [as well as in his life-time] an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious mendicacy,] are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance." A person wearing the token of mendicacy is one who has become a religious wanderer or ascetic.

12. By the term outcast, his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by *Baudhāyana*, who says, "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties: excepting, however, the outcast and his issue."

13. On this subject, *Nārada* says, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."

14. *Cātyāyana* ordains, that "The son of a woman married in irregular order; and begotten on her by a kinsman, is unworthy of the inheritance; and so is an apostate from a religious order."

15. If a woman of superior tribe be espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, being *cshétraja*, or issue of the wife, procreated by a kinsman authorized to raise an issue to the husband, is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate: so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

16. That is declared by *Cātyāyana*: "But the son of a woman married in irregular order, may be heir provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior] tribe, by a woman espoused in the regular gradation. The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment only are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony.

17. A possibility exists of an impotent man, and the rest as above enumerated, (§ 7), espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue, shall be capable of inheriting." Issue signifies offspring.

18. It must not be objected, how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are anapt for [the preparatory] study? The eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation, any more than a *Sudra*.

19. Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretensions of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life. It is so declared by *Yājñavalkya*: "Their sons, whether legitimate or the offspring of the soil, are entitled to allotments if free from similar defects. Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported: but such as are unchaste, should be expelled; and so indeed should those who are perverse."

20. Thus it has been explained, who are persons incompetent to inherit.

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## CHAPTER XI.

*On succession to the estate of one who leaves no male issue.*

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### SECTION I.

*On the Widow's right of succession.*

1. In regard [to succession] to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passages of law.

2. Thus *Vṛhaspati* says, "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives. How then should another take his property, while half his person is alive? Let the wife of a deceased man who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present. Dying before her husband, a virtuous wife partakes of his consecrated fire: or, if her husband die [before her, she shares] his wealth: this is a primeval law. Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids, and the clothes, let her duly offer his monthly, half-yearly, and other funeral repasts. With presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females [of the family.] Those near or distant kinsmen, who become her adversaries, or who injure the woman's property, let the king chastise by inflicting on them the punishment of robbery."

3. By these seven texts *Vṛhaspati* having declared that the whole wealth of a deceased man, who had no male issue, as well the immoveable

as the moveable\* property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles; [daughters,] daughter's sons and other heirs; and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property shall be punished as robbers; totally denies the right of the father, the brothers, and the rest, to inherit the estate if a widow remain.

4. In like manner *Yājñavalkya* says, "The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes." Thus affirming the right of the last mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.

5. So *Vishnu* ordains: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them, it descends to the brother's sons; if none exist, it passes to the kinsmen (*bandhu*;) in their default, it devolves on relations (*saculya*): [failing them, it belongs to the pupil:] on failure of these, it comes to the fellow student: and, for want of all those heirs, the property escheats to the king; excepting the wealth of a *Brahmana*."

6. By this text, relating to the order of succession, the right of the widow, to succeed in the first instance, is declared. It must not be alleged, that the mention of the widow is intended merely for the assertion of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the word wealth as signifying the whole estate in respect of brothers and the rest, and not the whole estate in respect of the wife. Therefore, the widow's right must be affirmed to extend to the whole estate.

7. Thus *Vrihat Manu* says, "The widow of a childless man, keeping unsullied her husband's bed, and per-evering the religious observances, shall present his funeral oblation and obtain [his] entire share."

8. "His" is repeated or understood from the words "his funeral oblation," for that term alludes to her husband. The meaning therefore is, 'the wife shall obtain her husband's entire share;' not 'she shall obtain her own entire share;' for the direction, that 'she shall obtain,' would be impertinent, in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for that is known already from the enunciation of it as that person's share, [and it need not therefore be declared.]

9. Nor should it be said, that the intention of the text is to authorize the taking [or using] of the goods, [not to declare the right of property;] for the taking or using of one's own property is a matter of course.

10. Nor can the text be supposed to intend a positive injunction [that she should take her own share.] For its purpose would be spiritual; and, if it were an injunction, a person who commanded and other particulars [as in the omission &c.] must be inferred.



11. It is alleged, that, as in the passage, "let a son, who is neither blind nor otherwise disqualified, take an entire share," [the meaning is,] not 'his father's entire share' but 'his own complete allotment;' so, in this instance likewise, the terms are [interpreted as] relative to the widow's own complete allotment. That is not accurate; for since there is no such passage of law as that stated, the example is impertinent; or admitting that there is, still, since for the reason before-mentioned it would be impertinent as a precept, [the alleged example] will be rightly interpreted as relative to the father's share.

12. Accordingly [since the scope of the precept cannot be to declare a right of property in a person's own wealth;] the sages do, in all instances, propound the right of a different person [as heir,] to the wealth of another [who is his predecessor;] for example, that of sons to the paternal estates; and that of widows and the rest to the goods of a man who leaves no male issue; and so in other cases. They do not needlessly bid a person take his own share.

13. It is alleged, that by the mention of the relative, the correlative is suggested; and thus, when the word mother is [singly] employed, it is not understood to intend a stranger's mother. This objection is irrelevant; for the maxim is applicable where the correlative is not specified: and thus, when it is said "call *Dittha's* mother," neither the mother of the messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase "his funeral oblation," how can [the word share] refer to the wife? And the incongruity of supposing the text to be an injunction, has been already shown (§ 10).

14. Therefore, it is demonstrated, that *Vṛhat Manu* (§ 7) declares the widow's right of taking his [that is, her husband's] entire share.

15. Passages of various authors, which declare the contrary of the widow's right of succession, are the following. *Sínkha Lichita*, *Paithínasi* and *Yama* say, "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife, or a kinsman (*sagótra*), a pupil, or a fellow student."

16. Here, in contradiction to the preceding texts, the succession of the father and mother; if there be no brother, or that of the wife, if they be both dead, is propounded.

17. So *Dévala* ordains: "Next let brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal [as appertaining to the same tribe]; or let the father if he survive, or [half] brothers belonging to the same tribe, or the mother, or the wife, inherit in their order. On failure of all these, the nearest of the kinsmen succeed."

18. Here the contradiction is, the brother being placed first of all the heirs, and the widow last.

19. Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separated or to be reunited; and the widow's right of succession is relative to the estate of one, who was separated from his co-heirs and not reunited with them.

20. That is contrary to a passage of *Vṛthaspati*, who says "Among brothers, who become reunited, through mutual affection, after being separated, there is no right of seniority, if partition be again made. Should any one of them die, or in any manner depart [by entering into a religious

order,] his portion is not lost, but devolves on his uterine brother. His sister also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent. If any one of the reunited brethren acquire wealth by science, valour, or the like, [with the use of the joint stock.] two shares of it must be given to him, and the rest shall have each a share."

21. Here, since reunion of parceners is specified at the beginning, and at the close of the text, the intermediate passage, "his share is not lost but devolves on his uterine brother," must be understood as relating to a reunited parcener. And the author, saying this "law concerns one who leaves no issue, nor wife nor parent," declares the right of a reunited uterine brother as taking effect on failure of son, daughter, widow and parents. How then does [the reunited brother] bar the widow's title to the succession?

22. Besides the text expresses, that "his share is not lost;" and the expression is pertinent in regard to unseparated parceners and reunited co-heirs, since the lapse of the share might be supposed, because the property, being intermixed with another brother's effects, is not seen apart; but, the property of a separated co-heir being distinctly perceived in a separate state, what room is there for supposing its lapse? Therefore, these texts [of *Vṛhaspati* vide 20] relate to reunited co-heirs.

23. Moreover, the inference, that the texts of *Sāṅkha* and others above cited, (§ 15 &c.) which declare the preferable right of the brother before the widow and the rest, relate to a reunited brother, [as well as an unseparated, one,] must be drawn either from the authority of a text of law or from reasoning. Now it is not deducible from a text of law; for there is none which bears that meaning expressly; and the passages, concerning the succession of the reunited parcener (Sect. 5 § 13) containing special provisions regarding the brother's succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow.]

24. Since the texts of *Vṛhaspati* just now cited (§ 20) contradict that inference; for the brother's right is there declared to take effect, in the case of reunion, on failure of son, daughter, widow and parents; brethren not reunited must be the subject [of those passages of *Sāṅkha* &c. § 15.] That alone is right; and they do not relate to [unseparated and] reunited brethren.

25. But it is said, this inference is deduced from reasoning. Thus, in the instance of reunion, [or in that of a subsisting coparcenary,] the same goods, which appertain to one brother, belong to another likewise. In such case, when the right of one ceases by his demise those goods belong exclusively to the survivor, since his ownership is not divested. They do not belong to the widow; for her right ceases on the demise of her husband; in like manner as his property devolves not on her, if sons or other [male descendants] be left.

26. That argument is futile. It is not true, that, in the instance of reunion [and of subsisting coparcenary,] what belongs to one, appertains also to the other parcener. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole; for there is no proof to establish their ownership of the whole; as has been before shown [when defining the term partition of heritage.] Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage, ceases on his demise. But the cessation of the widow's right of property, if there be male issue, appears only from the law ordaining the succession of male issue.

27. If it be said, that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the reunited parcener; the answer is, no, for it is not true that the text relates to reunited parceners; since the law, which declares the brother's right of succession, may relate to reunited brethren, if it be true, that the widow's right of ownership ceases by the demise of her husband who was reunited with his co-heirs; and the widow's proprietary right does so cease, provided the law relate to the case of reunited brethren. Thus the propositions reciprocate.

28. Besides, if the texts of *Sáncha*, *Lichita* and the rest, (§ 15 &c.) relate to unseparated or reunited parceners, they must be interpreted as signifying, that 'the wealth of one, who is either unseparated or reunited, goes to a brother who is so; or, if there be none such, the two parents take it.' In that case, a question may be proposed, shall parents, who are separated and not reunited, take the heritage? or parents who are either unseparated or reunited? Here the first proposition is not admissible; for how can the claim of parents, who are separated and not reunited, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable; for all agree, that a father, being unseparated or reunited, takes the heritage in preference to an unseparated or reunited brother.

29. Moreover, as in the instance of the estate of one, who was separated from, and not reunited with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said "he himself is born a son :) and because the deceased, by participating [with the manes of the grandfather and great-grandfather] in funeral off-rings, partakes of two oblations of food which his father must present to the grandfather and great-grandfather [at the same time that none are presented by his brother]; for sons do not offer the half-monthly oblations of food, while their father lives; so the same [preference of the father before the brother] is fit in the other instance [of the estate of one who is either unseparated or reunited]. Or, since they are alike in respect of co-parcenary and reunion, the equal right of father and son would be proper, not the postponement of the father's claim to the brother's.

30. Further, the dual number, expressing, that 'parents, who are unseparated or reunited, take the heritage,' is unsuitable: for there is neither partition, nor co-parcenary, with the mother; and consequently no reunion of estates; since *Vrihaspati* says, "He, who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed reunited." He thus shows, that persons, who by birth have common rights in the wealth acquired by the father and grandfather, as father [and son] brothers, uncle [and nephew], are reunited, when, after having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulating, that "The property, which is mine, is thine; and that, which is mine, is thine." The partnership of traders, who are not so circumstanced, and only act in concert on an united capital, is no reunion. Nor are separated co-heirs reunited merely by junction of stock, without an agreement prompted by affection as above stated. Therefore, since neither reunion nor co-parcenary with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

31. In the next place, the manner in which the difficulty is removed by the wise, will be stated. From the texts of *Vishnu* (§ 5) and the rest [as *Yājñyavalkya* &c. § 4] it clearly appears, that the succession devolves on the widow, by failure of sons and other (male descendants :) and this is reasonable; for the estate of the deceased should go first to the son, grandson, and great-grandson. Thus *Menu* and *Vishnu* says, "Since a son delivers (*trāyaté*) his father from the hell called *put*; therefore he is named *puttra* by the self-existent himself." So *Hārīta* says, "A certain hell is named *put*; and he, who is destitute of offspring, is tormented in hell. A son is therefore called *puttra*, because he delivers his father from that region of horror." In like manner *Sāncha* and *Lichita* declare, "A father is exonerated in his life-time from debt to his own ancestors, upon seeing the countenance of a living son; he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial hearth, the three *vedas*, and sacrifices rewarded with ample gratitudes, have not the sixteenth part of the efficacy of the birth of an eldest son." Thus *Menu*, *Sāncha*, *Vashista*, *Lichita* and *Hārīta* ordain, "By a son, a man conquers worlds; by a son's son, he enjoys immortality; and, afterwards, by the son of a grandson, he reaches the solar abode." So *Yājñyavalkya* says, "The attainment of worlds, immortality and heaven depend on a son, grandson and great-grandson."

32. Thus the proprietary right of sons and the rest is expressly ordained, as already inferrible from reasoning; because the wealth, devolving upon sons and the rest, benefits the deceased: since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth; and they present funeral oblations, half-monthly, in due form, after his decease. So *Menu* declares the right of inheritance to be founded on benefits conferred: "By the eldest son as soon as born, a man becomes the father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage."

33. From the mention of it as a reason ("therefore" &c.) and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which *Menu* assents, that the right of succession is grounded solely on the benefits conferred.

34. Accordingly [since benefits are derived from the great-grandson as well as from the son,] the term "son" [in the text of *Menu*, §32 or in that of *Vishnu*, § 5 or in those of *Yājñyavalkya* &c.] extends to the great-grandson; for, as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies.

35. Else [if it were not inferrible from reason, or if *Menu* did not mean, that the right of succession rests upon benefits conferred:] the word son could not quit its proper sense [for a larger import;] and a passage, declaratory of the grandson's right, must be somehow assumed. [But, admitting that such a passage may be assumed [as inferrible from the declared right of a daughter's son considered as a son's son;] still there is no separate text concerning the great-grandson.]

36. Therefore the great-grandson's right of succession is founded on benefits derived from him; and the word son is of comprehensive import.

37. Accordingly *Baudhayana* says, "The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same tribe, his son's son and his great-

grandson: all these, partaking of undivided oblations, are pronounced *sapindas*. Those, who share divided oblations, are called *saculyas*. Male issue of the body being left, the property must go to them. On failure of *sapindas* or near kindred, *saculyas*, or remote kinsmen, are heirs. If there be none, the preceptor, the pupil, or the priest, takes the inheritance. In default of all these, the king (has the escheat.)

38. The meaning of the passage is this: since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies; and since the son and other descendants, to the number of three, present oblations to the deceased (or to be shared by his manes;) and he, who, while living, presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost (of seven,) who, while living, offered food to the manes of ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their life-time, and shares with them when they are deceased, the food which must be offered by the daughter's son and other (surviving descendants beyond the third degree.) Hence those (ancestors) to whom he presented oblations, and those (descendants,) who present oblations to him, partake of an undivided offering in the form of (*pinda*) food at obsequies. Persons, who do partake of such offerings, are *sapindas*. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors, from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated *saculyas*, as partaking of divided oblations, since they do not participate in the same offering.

39. This relation of *sapindas* [extending no further than the fourth degree,] as well as that of *saculyas*, has been propounded relatively to inheritance.

40. Accordingly [since the right of succession to property is founded on competence for offering oblations at obsequies,] *Menu* likewise, after premising "Not brothers, nor parents, but sons, are heirs of the father;" proceeds, in answer to the question why? to declare, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them."

41. But for mourning and other purposes, the relation of *sapindas* extends to such as partake of the remains of oblations; for that relation is defined in the *Marcandeyi-purana* as founded on participation in the wipings of offerings. "Three others, from the grandfather's grandsire upwards, are declared to be partakers of the residue of oblations; they, and the person who performs the religious rite, being seventh in descent, constitute that relation, which is termed by the holy sages kin within the seventh degree." The meaning here is kin which occasions impurity [on occasion of deaths and births].

42. Accordingly *Menu* likewise has said, when treating of uncleanness by reason of mourning, &c., "The relation of *sapindas* ceases with the seventh person [in ascent or descent;] and that of *samanodacas* ends only where birth and family name are no longer known." Else this passage would be in contradiction to the next before cited: "To three must libations of water be made, &c." (§ 39.)

43. But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,] succeeds to the estate in their default. Thus *Vyāsa* says, "After the death of her husband, let a virtuous woman observe strictly the duty of continence; and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and specially the adoration of *Vishnu*, practising constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. A woman, who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss.]"

44. Since by these and other passages it is declared, that the wife rescues her husband from hell; and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror:] for they share the fruits of virtue and of vice; therefore the wealth devolving on her is for the benefit of the former owner: and the wife's succession is consequently proper.

45. Hence [since the wife's right of succession is founded on reason,] the construction in the text of *Sāncha*, &c., (§ 15), must be arranged by connexion of remote terms in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that is, his most excellent] wife take; or, in her default, let the parents take it: on failure, of them, it goes to the brothers.' The terms "if there be none [that is, if there be no wife]," which occur in the middle of the text, (§ 15) are connected both with the preceding sentence "it goes to his brothers," and with the subsequent one "his father and mother take it." For the text agrees [with passages, of *Vishnu* and *Yājñavalkya*, § 4 and 5, which declare the wife's right,] and the reasonableness of this has been already shown, (§ 43.)

46. The assumption of any reference to the condition of the brethren as unseparated or as reunited, not specified in the text, is inadmissible [being burdensome and unnecessary.] Therefore the doctrine of *Jitēndriya*, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his co-heirs, or united with them, (for no such distinction is specified), should be respected.

47. The rank of wife belongs in the first place to a woman of the highest tribe: for the text [of *Sāncha* &c.] expresses, that "the eldest wife takes the wealth" (§ 15 & 45;) and seniority is reckoned in the order of the tribes. Thus *Menu* says, "When regenerate men take wives both of their own class and others, the precedence, honour, and habitation of those wives must be settled according to the order of their classes." Therefore [since seniority is by tribe,] a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The rank of wife (*patnī*) belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly *Menu* says, "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion. For he, who foolishly

causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been "immemorially considered as a mere *Chandala* begotten on a *Brahmani*." But, on failure of a wife of the same tribe, one of the tribe immediately following [may be employed in such duties.] Thus *Vishnu* ordains, "If there be no wife belonging to the same tribe, [he may execute the business relating to acts of religion] with one of the tribe immediately following, in case of distress. But a regenerate man must not do so with a woman of the *Sudra* class." 'Execute business relating to acts of religion,' is understood from the preceding sentence. Therefore, a *Brahmani* is lawful wife (*patnī*) of a *Brahmanu*. On failure of such, a *Cshatriya* may be so, in case of distress; but not a *Vaisya*, nor a *Sūdra*, though married to him. A *Cshātriya* woman is wife of a *Cshātriya* man. In her default, a *Vaisya* woman may be so, as belonging to the next following tribe; but not a *Sūdra* woman. A *Vaisya* is the only wife for a *Vaisya*: since a *Sūdra* wife is denied in respect of the regenerate tribes simply.

48. In the manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since women actually espoused may not have the rank of wives, the following passage of *Nāreda* intends such a case. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise the brethren may resume that allowance." So [this other passage] of the same author; ["On failure of heirs, the property goes to the king,] except the wealth of a *Brāhmana*. But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared." The allotment of a maintenance to the women of such persons, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, constitute no discrepancy.

49. Accordingly, *Vṛhaspati* propounds the king's right to an escheat in default of the wife: "If men of the military, commercial and servile tribes die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all." But *Nāreda*, directing, that he should give a maintenance to the women of such persons," (§ 48) authorizes the king to take the whole estate, giving to them enough for their support. This contradiction must be reconciled by distinguishing between the wife and the espoused woman. Accordingly, in passages declaratory of the wife's right of succession, the term "wife" (*patnī*) is employed: and, in those which ordain a maintenance, the terms "woman" (*strī* or *nārī*) or "spouse" (*bhāryā*) or other similar word.

50. In the text of *Dēvala*, (§ 17) which expresses, "Next let brothers of the whole blood divide the heritage of him, who leaves no male issue; or daughters equal [as appertaining to the same tribe;] or let the father, if he survive, or brothers belonging to the same tribe, or the mother, or the wife, inherit in their order; but, on failure of all these, the nearest of the kinsmen succeed;" where "daughters equal" are such as appertain to the same class [with the deceased]; and "brothers belonging to the same tribe" intend those of the half blood; for whole brothers are specified under the appropriate term, and the distinction would be impertinent [as not excluding any one; or as superfluous, since while brothers, of course, belong to the

same tribe:] in this text, we say, the order, in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession; since it contradicts *Vishnu* and the rest [as *Vṛhaspati* and *Yājñavalkya*]: but the meaning of the text is, that the heirs shall take the succession in the order declared by *Vishnu* and others. To mark uncertainty in the specified order, the author has twice used the word 'or,' once in the phrase "or daughters," and again in the sentence "or let the father, &c.," and the word is also understood in other places. Thus *Dēvala* has himself shown vagueness in his own enumeration, intimating, that "either brothers, or daughters, or parents &c. [take the succession]."

51. As for what has been said by *Bīlōka*, concerning the text of *Sāncha* and the rent (§ 15), that it either relates to a wife inferior in class to her husband, or supposes the widow to be young, or is relative to brethren unseparated or reunited, that author has manifested his own imbecility by thus proposing an indefinite interpretation of the law: for the doubt remains [which of the three is intended,] and neither rule could be followed in practice.

52. As for the assertion, that the text, which ordains a maintenance, is relative to an unmarried woman and concubine, that must be rejected as intending a favour to the matrons; for the scope of the precepts, which allot a maintenance to women, has been already shown.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different tribe, how is the contradiction [of the text to passages of *Vishnu* and *Yājñavalkya* § 4 and 5] regarding the succession of parents and brothers, to be reconciled [without transposition, or without connecting in construction remote terms?] If it be by distinguishing the cases of reunion and continued separation, the same distinction may pervade the whole subject: and what occasion is there for assuming a difference relative to the wife, as belonging to the same or to another tribe? But the proposed distinction, founded on reunion and separation, (§ 19) has been already fully refuted by us (§ 30.)

54. The distinction regarding the whole and the half blood is contradicted by *Vṛhaspati*, who says "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren be present." Uterine brethren are brothers by the same mother [and, of course, of the whole blood.] The author declares the wife's right of succession, although such persons exist. By the term "his share," is understood the entire share appertaining to her husband; not a part of it only [sufficient for her support.]

55. Therefore the interpretation of the law is right as set forth by us.

56. But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage, or sale of it. Thus *Cātyāyana* says, "Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her let the heirs take it."

57. Abiding with her venerable protector, that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life; and not, as with her separate property, make a gift, mortgage, or sale of it at her pleasure. But, when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate; not the kinsmen [or *sapindas*:] since these, being inferior to the daughter and the rest, ought not to exclude those heirs: for the widow debars them



of the succession ; and, the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

58. Nor shall the heirs of the woman's separate property [as her brothers, &c.] take the succession [on failure of daughters and daughter's sons, to the exclusion of her husband's heirs ;] for the right of those [persons, whose succession is declared under that head, C. 4.] is relative to the property of a woman [other than that which is inherited by her.] *Cātyāyana* has propounded by separate texts the heirs of a woman's property ; and [his text, declaratory of the succession to heritage,] would be tautology : [consequently heritage is not ranked with woman's peculiar property.]

59. Therefore those persons, who are exhibited in a passage above cited (§ 4) as the next heirs on failure of prior claimants, shall, in like manner as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time [when the widow dies, or when her right ceases,] the succession of daughters and the rest is proper, since they confer greater benefits on the deceased (by the oblations presented by them) than other claimants (such as the *sapindas* above mentioned. § 37)

60. Thus in the *Mahābhārata*, in the chapter entitled *Dīnadharmā*, it is said " For women, the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husband's wealth."

61. Even use should not be by wearing delicate apparel and similar luxuries : but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner (since the benefit of the husband is to be consulted,) even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, " Let not women make waste." Here " waste" intends expenditure not useful to the owner of the property.

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property ; or, if still unable, she may sell or otherwise alien it : for the same reason is equally applicable.

63. Let her give to the paternal uncles and other relatives of her husband, presents in proportion to the wealth, at her husband's funeral rites. *Vṛihaspati* directs it, saying " With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family." The term " paternal uncle" intends any *sapinda* of her husband ; " daughter's sons," the descendants of her husband's daughter ; " children of his sister," the progeny of her husband's sister's son ; " maternal uncles," her husband's mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming : for the specific mention of paternal uncles and the rest would be superfluous.

64. With their consent, however, she may bestow gifts on the kindred of her own father and mother. Thus *Nārada* says, " When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power. But, if the husband's family be extinct or contain

no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the decree of a *sapinda*." In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his decease, and in default of sons.

65. In like manner, if the succession have devolved on a daughter, those person's, who would have been heirs of her father's property in her default, [as her son, her paternal grandfather, &c.] take the succession on her death; not the heirs of the daughter's property [as her daughter's son, &c.]

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage. Since sons are required to give that allotment, much more should the wife, or any other successor, give a like portion.

67 Thus has the widow's right of succession been explained.

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## SECTION II.

### *On the right of the Daughter and Daughter's Son.*

1. The daughter's right of succession on failure of the wife [is declared.] On that subject *Menu* and *Náreda* say, "The son of a man is even as himself; and the daughter is equal to the son: how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself?" *Náreda* particularizes the daughter [as inheriting in right of her continuing the line of succession:] "On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race; since both the son and daughter are the means of prolonging the father's line." The author states the circumstance of her continuing the line as a reason of the daughter's succession: and the line of descendants here intends such descendants as present funeral oblations; for one, who is not an officer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son; nor the daughter's daughter; for the funeral oblation ceases with him.

3. Therefore the doctrine should be respected, which *Dicshita* maintains, namely, that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property [to the exclusion of any daughter verbally betrothed.] Accordingly *Párasara* says, "Let a maiden daughter take the heritage of one who dies leaving no male issue; or, if there be no such daughter, a married one shall inherit." In the term "married" is here implied the restriction before-mentioned [excluding one who fails in bringing male issue.]

5. Thus *Dévala* says, "To maidens should be given an uptial portion out of the father's estate. But of him, who leaves no appointed daughter, [nor son,] the unmarried daughter, belonging to his own tribe,

and legitimate, shall take the inheritance, like a son." The term "appointed daughter" implies also son. "His own;" belonging to the same tribe with himself. "Legitimate;" his own lawful issue.

6. This is proper: for, should the maiden arrive at puberty unmarried, through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus *Vasishtha* says, "So many seasons of menstruation as overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and her mother; this is a maxim of the law." So *Paithinasi*: "A damsel should be given in marriage, before her breasts swell. But, if she have menstruated [before marriage,] both the giver and the taker fall to the abyss of hell; and her father, grandfather, and great-grandfather, are born [insects] in ordure. Therefore she should be given in marriage while she is yet a girl."

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charges of her marriage; and, being accordingly married, she confers benefits on her father by means of her son; the wealth devolving on her is for the benefit of the [former] owner; and it is reasonable, therefore, that the property should descend to the unmarried daughter, on failure of the wife.

8. But, if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue. That is declared by *Vrihaspati*: "Being of equal class and married to a man of like tribe, and being virtuous and devoted to obedience, she [namely, the daughter,] whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son [nor wife.]"

9. Of equal class. [Belonging to the same tribe with her father. Married to a man of like tribe.] This is intended to exclude one married to a man of a superior or inferior tribe. For the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

10. The son of a daughter appointed to continue the male line is, like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and legitimate son have an equal right of succession. But a married daughter, who was not so appointed, confers less benefit on her father than the son and the rest [viz., the son's son and grandson's son, and the widow,] and is of benefit by means only of her son: it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

11. It must not be alleged, that, admitting this doctrine [of benefits conferred being the cause of a right of succession,] the daughter, who has male issue, should alone inherit in the first instance; but, on failure of such, than a daughter who may have issue. For her son, born subsequently, might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

12. By specifying "obedience" to her husband (§ 8), the author indicates, that she is not in the state of widowhood, and that consequently she may have issue.

13. In the text before cited (§ 8,) the pronoun refers to the word "daughter" contained in a preceding passage [which will be forthwith quoted. § 14.] Thus, by the conditions specified, that she be "of equal class" and "married to a man of like tribe," &c. (§ 8), the author shows, that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology.

14. "As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son; therefore, even in the case of an appointed daughter, on whom the estate has devolved by the demise of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go upon her death to her husband. Thus *Sancha* and *Lichita* say, "The husband is not entitled to the wealth of his wife, being an appointed daughter, if she die leaving no issue." So *Paithinasi*: "On the death of an appointed daughter, her husband does not inherit her property: if she leave no issue, it shall be taken by her unmarried sister or by another." Hence her property is to be taken by her maiden sister, or by another sister likely to have issue, therefore, when the succession has devolved on a female, [her husband's] claim [as her heir] is precluded.

16. But the following passage of *Menu* must be understood to be applicable, on the demise of an appointed daughter, who has not been destitute of male issue, having borne a son who has died. "Should a daughter, appointed to continue the male line, die by any accident without a son, the husband of that daughter may without hesitation possess himself of her property."

17. *Vrihaspati* recites the gift of the funeral oblation as the sole cause [of right] in the instance of both [the daughter and the grandson] "As the ownership or her father's wealth devolves on her, although kindred exist; so her son likewise is acknowledged to be heir to his maternal grand-father's estate." As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others.

18. Nor does this text (§ 17) relate to the son of an appointed daughter: for the pronoun "her," in both the phrases ("devolves on her," and "her son is acknowledged,") bears reference to the "daughter whether appointed or not appointed," who was mentioned in the preceding passage (§ 8.) Or, upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed." But this term cannot be rejected to select the other.

19. Accordingly *Menu* propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son: else he would have specified this cause. "Let the daughter's son take the whole estate of his own father who leaves no [other] son; and let him offer two

funeral oblations; one to his own father, the other to his maternal grandfather. Between a son's son and the son of a daughter, there is no difference in law; since their father and mother both sprung from the body of the same man."

20. Thus this very author expressly declares, that the daughter's son, born of one not appointed to continue the male line, has the right of succession. "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class; the maternal grandfather becomes in law the father of a son: let that son give the funeral oblation and possess the inheritance."

21. Besides the term 'daughter's son' is in law restricted to signify the male offspring of an appointed daughter. *Baudhayana* intimates that, when he says, "(Consider as) another (son) the daughter's son termed son of an appointed daughter, being born of the female issue after an express stipulation." Here 'consider' is understood.

22. Hence also (since such is the scope and purport of the text; § 17.) *Bhījadēva* has cited that passage of *Vṛhaspati* under the head of succession of a daughter appointed of unappointed.

23. But *Gōvinda-Raja*, in his commentary on *Menu*, states the claim of the daughter's son as preferable to that of the married daughter, on the grounds of the following passage of *Vishnu*. "If one die leaving neither son nor grandson, the daughter's sons shall inherit the estate; for, by consent of all, the son's son and the daughter's son are alike in respect of the celebration of obsequies."

24. This does not appear to us satisfactory: for it contradicts the text above cited (§ 8.)

25. But, in default of a married daughter such as above described, the succession assuredly devolves on the daughter's son, notwithstanding the existence of the father and other kinsmen. For it appears from the comparison of his condition to her's, (§ 17) and more expressly from the purport of the term "likewise" in the phrase "her son likewise is acknowledged to be heir," (§ 17), that his pretensions are inferior to her's. Therefore it is a right deduction, that the succession of the daughter's son is next after the daughter.

26. By the words "although kindred exist," (§ 17) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter's son, is hinted as taking place when no such impediment exists. Accordingly *Vṛhaspati*, immediately after [the passage above cited, § 17] says "On failure of those persons, the brothers and nephews of the whole blood are entitled to the estate, or kinsmen, or cognates, or pupils, or venerable priests." Here the word "those" bears reference to the daughter's son [named in the text,] and to the parents indicated [by the term kindred.] Therefore, it is on failure of these persons, that the succession of brothers and the rest takes place.

27. As for the assertion of *Bālōca*, that the daughter's son inherits after the whole series of heirs specified in the passage of [*Yājñyavalkya*] above cited, "The wife, daughters also," &c., (Sect. 1 § 4) that is more childish prattle; for it contradicts the text of *Vṛhaspati* (§ 17.) Nor is there any thing inconsistent with that enumeration of heirs; for the maiden daughter, married daughter, and daughter's son, are all signified by the

term "daughter" in the plural number (Sect. 1. 4.) As the word "son," in the phrase "who departed for heaven leaving no son," intends male issue down to the great-grandson, since he is equally a giver of funeral oblations ; so does the term "daughter" comprehend the daughter's son, for he also is the giver of a funeral offering ; or as the term "male issue," in the sentence on failure of male issue, the daughter inherits" § 1, intends the widow also. Else the plural number, in the word "daughters," would be unmeaning : and the author would have used the singular number, as in the words "the wife," "the son of a brother" &c. We shall hereafter [in the course of expounding passages concerning the reunion of parceners] explain the intention of the plural number in the word "brothers," (Sect. 1. 4.)

28. Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter's son takes effect on failure of the king. But there never is a vacancy of the throne ; and consequently the succession could never take place.

29. Therefore the succession of the daughter's son on failure of daughters, as affirmed by *Visvarūpa*, *Jiténdria*, *Bhōjadéva* and *Góvindaraja*, should be respected.

30. But, if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die [without bearing issue,] the estate, which was her's becomes the property of those persons, a married daughter or others, who would regularly succeed if there were no such (unmarried daughter) in whom the inheritance vested, and in like manner succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs : for that (text, which is declaratory of the right of the husband and the rest,) is relative to a woman's peculiar property. Since it has been shown by a text before cited (Sect. 1. § 56), that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely, the daughters and the rest, succeed to the wealth ; therefore the same rule [concerning the succession of the former possessor's next heirs] is inferred *a fortiori*, in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. Or the word "wife" [in the text above quoted, Sect. 1. § 56] is employed with a general import : and it implies, that the rule must be understood as applicable generally to the case of a woman's succession by inheritance.

32. Thus has the succession of the daughter and daughter's son been explained.

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### SECTION III.

#### *On the Father's right of Succession.*

1. If there be no daughter's son, the succession devolves on the father ; and not on the mother [before the father] ; nor at once on both parents. For that is contrary to *Vishnu's* text, "If there be none, it belongs to the father ; if he be dead, it appertains to the mother.

2. But the following passage of *Menu*, as well as that of *Vrihaspati*, must be understood as relating to a case of failure of heirs down to the father inclusively. "Of a son dying childless [and leaving no widow] the mother shall take the estate ; and, the mother also being dead, the father's

mother shall take the heritage." "Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress : or, by her consent, the brother may inherit."

3. This is a result too of reasoning. The father's right of succession should be after the daughter's son and before the mother : for the father, offering two oblations of food to other males, in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased and two to other males in which the deceased participates : he is preferable to the mother and the rest because he presents [personally] to others two oblations in which the deceased participates ; and his superiority is indicated in a passage of *Menu* : "In a comparison of the male with the female sex, the male is pronounced superior."

4. In the term *pitarau* "both parents" (Sect. 1. § 4), the priority of the father is indicated : for the father is first suggested by the radical term *pitri* ; and afterwards the mother is inferred from the dual number, by assuming, that one term [of two which composed the phrase] is retained.

5. Hence [since the members of the series are presented to the understanding in the order here stated], the argument, that, the mental apprehension of a series being co-extensive with the oral recital of its component members ; recital, being wanting, necessarily precludes apprehension, must be rejected as inconclusive ; for it is not true, that an adequate indication is wanting [being deducible in the manner above stated ; § 4.] and [the joint succession of father and mother] would contradict the text of *Vishnu*.

6. Thus the father's right of succession has been explained.

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#### SECTION IV.

##### *On the Mother's right of Succession.*

1. If the father be not living, the succession devolves on the mother : for, immediately after propounding the father's right to the estate, *Vishnu's* text declares, "If he be dead, it appertains to the mother."

2. This too is reasonable : for her claim properly precedes that of the brothers and the rest ; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy ; and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will participate.

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father ; since it is said "Of him who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father:" and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother's right of succession is after the father [and before the brothers.]

4. By thus declaring, that the mother's succession takes place after the father of the deceased, and before the father's offspring, the author intimates, that the paternal grandmother's succession likewise takes place after the grandfather and before the grandfather's offspring. For otherwise

[if a different order of succession be assumed; or if that order be not established; or that indication be not acknowledged;] there is a contradiction between the specified order of succession, "both parents, brothers likewise, &c.," [and this case which is perfectly analogous.] Accordingly [since the grandmother's right of succession is in this manner indicated by *Yājñyavalkya*;] *Menu* says, 'And the mother also being dead, the father's mother shall take the heritage.' The meaning is 'being dead, that is, deceased, together with her offspring.'

5. Here the particle "and," as well as "also," must be joined in construction with both parts of the sentence. Therefore the sense is 'and the mother being dead, the paternal grandmother also may take the heritage.' What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle "also."

6. The meaning then of the text [of *Yājñyavalkya*] is this; the succession of both parents takes effect, in the order which has been explained, after the descendants of the deceased down to his daughter's son, and before [the father's] own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly it is not separately propounded in the text of *Yājñyavalkya*; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother's right of succession.

7. Thus the mother's right of inheritance has been explained.

#### SECTION V.

##### *On the Brother's right of Succession.*

1. If the mother be dead, the property devolves on the brother: for *Vishnu*, having declared, that, "If the father be dead, it appertains to the mother" proceeds to say, "On failure of her, it goes to the brothers:" and here the pronoun refers to the mother. It appears also from the passage [of *Yājñyavalkya*] "both parents, brothers likewise," that the brother's succession takes place in the case of the death of both parents.

2. It must not be alleged, that, under the passage above cited, which expresses "brothers likewise and their sons," the brother's son, being declared heir in like manner as the brothers are, shall inherit also next to the mother. For the text of *Vishnu*, declaring that "it goes to the brothers," adds "After them, it descends to the brother's sons:" and in this place the pronoun refers to the brothers.

3. That too is reasonable: for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer; and he is therefore superior to the brother's son, who has not the same qualifications. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother; and his succession, therefore, very properly takes effect after her.

4. Besides why may not the word "likewise" be connected with the term "brother?" and thus the parents and brothers may have an equal right of succession; the text being interpreted 'as parents, so do brothers inherit.'



5. The question, then, must be negatived, as at variance with the text of *Vishnu* : and the same is to be done in the other instance likewise [of the claims of brother and brother's son.] So *Menu* declares, that brothers take the inheritance, not the nephew. "Of him, who leaves no son, the father shall take the inheritance ; or the brothers."

6. Moreover, why has not the nephew, whose father is living, a right of succession ? There is no other reason but this : that one, whose father is living, does not confer benefits, since he is incompetent to offer oblations. If then it be thus settled, [that the order of succession is regulated by the degree in which benefits are conferred.] how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal benefits ? Accordingly *Dévala*, in a passage before cited (Sect. 1. § 17,) not specifying the brother's son in the series of heirs down to the half brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half brother.

7. The passage, which pronounces a nephew to be as a son, ["They are all fathers by means of that son ;"] is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers. [They do not inherit together ;] for that contradicts the text [of *Vishnu*] above cited. Else why should not [his right of succession] be before the brothers.

8. Therefore the brother alone is heir in the first instance.

9. Here again, a brother of the whole blood has the first title ; under the following text (§ 10) : and, even under the general rule for the brother's succession ("Brothers also" Sect. 1. § 4). The meaning is, that the whole brother shall inherit in the first place : but, if there be none, then the half brother ; for he also is signified by the word brother, being issue of the same father.

10. The passage alluded to (§ 9) is as follows : "A reunited [brother] shall keep the share of his reunited [co-heir.] who is deceased : or shall deliver it to [a son subsequently] born. But an uterine brother [shall thus retain or deliver the allotment] of his uterine relation." This text of *Yājñyavalkya* also shows, that the term brother is applicable both to the whole and to the half blood. Else, if it intended only the uterine [and of course whole] brother, the author would not have specified, that "the uterine brother, should retain or deliver the allotment of his uterine relation : " for the whole blood would be signified by the single term "brother."

11. Therefore the succession of brothers, whether of the whole or of the half blood, is declared by the passage before cited ("Both parents, brothers likewise." Sect. 1. § 4.) But, by here specifying the uterine relation, the prior right of the uterine (or whole) brother is intimated.

12. The succession of the half brother, between [the whole brother and the brother's son,] as affirmed by *Sricara* and *Visvarupa*, should be acknowledged ; for he is inferior to the whole brother, who presents oblations to six ancestors which the deceased was bound to offer, and also presents three oblations to the father and others, in which the deceased participates ; while the half brother only presents three oblations in which the deceased participates : and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations of which the deceased participates.

13. In answer to the inquiry whether the half brother, though reunited in co-parcenary, be inferior or not to the whole brother, *Yājñavalkya* says, "A half brother, being again associated, may take the succession; not a half brother, though not reunited: but one united [by blood, though not by co-parcenary.] may obtain the property; and not [exclusively] the son of a different mother."

14. The meaning of the text is this: 'A brother by a different mother, but associated again in co-parcenary, shall first take the inheritance; not generally any half brother [whether associated or separated.] The latter part of the text is in answer to the question, whether, inheriting first, he excludes the whole brother or takes the succession jointly with him? 'the whole brother, though not reunited in parcenary, shall take the heritage;' (here the word whole brother is understood from the preceding sentence:) 'not exclusively the son of a different mother, though reunited.' Or the term "united" may signify whole brother [or united by blood.] Accordingly the text is so read in the citation of it by *Jiténdriya* as a passage of *Vṛddha Yājñavalkya*: and, in that case, the term "associated" is understood from the preceding sentence.

15. Therefore the half-brother, who is again associated in co-parcenary, shall not take the succession exclusively; but the whole brother [shares it] though not associated. Such is the meaning: and consequently the whole brother, who is not reunited in parcenary, and the half brother, who is associated, should divide the succession. Accordingly the author has employed the particle "but" [with the connective sense.]

16. An objection is stated by *Srīcara Misra*. The maxim, that "the reunited brother shall keep the share of his reunited co-heir," (§ 11) is independent [of other precepts,] as it applies to the case of reunited half brothers exclusively; and, in like manner, the maxim that "the uterine [meaning the whole] brother retains the allotment of his uterine relation," (§ 10) bears no reference [to any other rule,] when it is applicable to the case of unassociated whole brothers only: but, when there is a half brother associated and a whole brother unassociated, if the two maxims be applied to this case in consequence of finding both descriptions of brethren, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative with and without reference to another maxim; for this argues variableness in the precept. Thus it is shown [by *Jaimini*,] in the disquisition on the passage *dwayōh pranayanti*, that the prohibition, relatively to two sacrifices, of the use of the *uttara-vēdi* or northern altar directed generally for the four sacrifices [in which those two are comprehended], is not a prohibition [but an exception]; for, if the precept concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instance of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variableness in the precept. So, in regard to the subject under consideration, the maxims, that "the reunited brother shall keep the shares of his reunited co-heir," and that "the uterine [or whole] brother shall retain the allotment of his uterine relation," (§ 10) are applicable in those cases in which the rules are operative independently of any other: but, if there be a half brother associated and a whole brother unassociated, the two rules are not applicable in this instance; and it would follow, that no one could take the estate [since there is no special provision in the law for this case.] Therefore [the

true interpretation is, that, in the case stated,] where the associated half brother might be supposed to be heir of his associated parcener, under the rule, that "a reunited brother shall keep the share of his reunited co-heir," the maxim that "the uterine [or whole] brother shall retain "the allotment of his uterine relation," serves as an exception to that rule. Thus the half brother, though associated, cannot be supposed to be heir, if there be a brother of the whole blood. Then how does the succession go? The whole brother, whether reunited or not reunited in co-parcenary, inherits the property.

17. That is not congruent: for it is not true, that there is variable-ness in a precept, merely because two [rules,] which are severally applicable to two [cases,] become applicable in a single instance at the same time.

18. Thus, in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of *Udgátr̥*, or the one performing the office of *Pratistótr̥*, singly stumble [in passing from the one apartment to the other, at the celebration of the sacrifice called *Jyotishóma*:] but, if both those priests should stumble at the same time, neither injunction would be applicable; for that would be a variableness in the precept.

19. In like manner, under the precepts, which direct the priest to touch an oblation with the prayer denominated *Cháturhótra* at the full moon, and with the prayer termed *Panchahótra* at the new moon; an oblation of curds consecrated to *Indra* is understood in the sacrifice named *Upánsu-yága*, and an offering of milk consecrated to *Indra* is similarly understood at the *Agnishóm̐ya* sacrifice; and, both precepts being thus severally applicable in those instances, neither of them would take effect at the *Agnéya* sacrifice, since there would be variableness in the precept if both were applied to this case.

20. Therefore, the definition of variableness in a precept is its being a positive injunction without reference to any opposition in one instance, and (an eventual one) with reference to the opposition of a different precept in another instance. Thus, in the example stated (§ 16,) the prohibition bears reference to the injunction concerning the altar, expressed in these words "At this sacrifice prepare the *uttara-védi*." Without opposition to that (injunction,) it would be no precept. Therefore it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it: for, were it so, the prohibition (as well as the injunction) would be useless; since, without the prohibition (and injunction,) the omission of the altar might be deduced (from the silence of the law.) Therefore, even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently there is variableness in the precept; and an alternative must be inferred. But, in the case of any thing supposed as a matter of spontaneous option, a prohibition is an absolute forbiddance: for the occasional omission of the act was inferrible without the aid of an express prohibition.

21. Accordingly (since there is a variableness in the precept, when a general and particular rule, or injunction and prohibition, are sometimes applicable in the same instance, but not when two particular rules are so; or since a prohibition, which is constant, is inferrible without the aid of

either injunction or prohibition;] the passages, which direct, that the *Shōdashin* shall be taken, and that it shall not be taken, [at an *Atirātrā* sacrifice,] constitute an alternative.

22. But according to the doctrine of those, who affirm, that an alternative is inferred by this reasoning, namely, that, since a prohibition implies a previous supposition [to the contrary,] the [negative] precept does not obviate the cause; an alternative would be inferrible even in the instance of a prohibition concerning that which was suggested only as a matter of spontaneous choice: for example, the passage which expresses "The priest makes not two [portions of an oblation of liquid butter] when a victim is offered; (nor at the sacrifice with acid asclepias:)" and other similar passages.

23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition (which is necessary to constitute an alternative?) for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause; it should eradicate it altogether, for (the precept, which suggested) the previous supposition, is of inferior cogency.

24. But they affirm, that this prohibition concerns the supposition of something which spontaneous choice may suggest, and is not a forbiddance of anything deduced from a precept. That is an assertion which argues extreme ignorance: for it would follow, that an alternative does not exist; since the practice of what is commanded by precept, and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not supposable as an essential part of a religious act.

25. Therefore, [since the opposite opinion is erroneous,] an alternative is inferred [not in the manner there proposed, but] according to the reasoning set forth by us [viz, that, if the prohibition be constant, both injunction and prohibition would be unnecessary; and, if the injunction were invariably cogent, the prohibition would be vain.] But let that be; for why expatiate?

26. As for the remark of the same author, who says (§ 16) that, "if there be a half brother associated and a whole brother unassociated, in which case the half brother might be supposed to be the heir under the rule, that "a reunited brother shall keep the share of his reunited co-heir;" (§ 10) then the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," (§ 10) serves as an exception to that rule. That is unsuitable, for, in this very case, the rule concerning the reunited co-heir might on the contrary serve as an exception to the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," under which the whole brother might be supposed to be the heir: since there is not in this instance any ground of preference.

27. But this author's interpretation of the text, "A half brother being again associated, &c.," (§ 13), as explanatory of the passage "a reunited brother shall keep the share of his reunited co-heir," is quite wrong: for, the intended purport being conveyed by that text, the passage in question would become superfluous.

28. Moreover the exposition of the text [by *Sricara*,] as signifying 'Let not the half brother, who is an associated half brother, take the estate; but the whole brother, (this term is understood,) who is not reunited, shall positively take it; a son of a different mother, though united, shall not inherit;' is also erroneous, for the same term 'half brother' in the first part o

the text, is needlessly repeated; and the phrase 'son of a different mother,' in the later part of it, becomes superfluous; and the particle *api* is taken in the sense of positively.

29. Besides, under the interpretation of the passage concerning the uterine (or whole) brother as an exception to the claim of the associated half brother if a whole brother unassociated exist; and its consequent inapplicableness to the case of a whole brother and half brother both unassociated; these would have an equal right of succession (under the general maxim, that brothers shall inherit; Section 1. § 4, since no distinction is specified;) or else the property would belong to neither of them (if the general rule be explained by the particular one.)

30. But, if the passage concerning the uterine (or whole) brother be applicable to this case also, (taking the term "uterine" as intending such a brother generally, whether associated or unassociated,) then the objection of variableness in the precept may be retorted on you; for the passage, concerning the reunited brother, bears reference to opposition in one case, (in that of the associated half brother and unassociated whole brother;) and bears no reference to opposition in another case, (in that of a whole brother and half brother both unassociated;) in like manner as it is declared, that the general rule for preparing the *védi* or altar at a sacrifice with the *Soma* plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed; since there would be variableness in the precept, if it operate in the case of the *Dicshntiya* and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule (concerning sacrifices celebrated at the full moon,) but in other instances operate without bar to anything else.

31. But, according to our interpretation, there is no variableness in the precept, even as that is understood by *Sricara*: for the passages concerning the reunited brother and the uterine [or whole] brother (§ 10) are relative severally to different cases; and that regarding "a half brother again associated" (§ 13) declares the equal participation of a whole brother unassociated and a half brother associated. Thus the meaning of the first part of that text is, 'a half brother, being reunited in co-parcenary, shall take the succession, although a whole brother not reunited exist; but a half brother, who is not reunited, shall not inherit.' The latter part of the text is in answer to the question, does not the whole brother inherit in that case? 'Though not reunited, the whole brother (this term is understood) shall take the heritage; and not exclusively the son of a different mother who is again associated. But it shall be taken and shared by both.' Thus the alleged variableness in the precept is obviated.

32. So *Menu* likewise shows the same rule of succession. "His uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally."

33. Reciprocation being indicated by the plural number, in the term "uterine brothers," as respecting these exclusively; and in the words "brothers reunited", as relating to the half brothers; the words "assemble together" are properly employed to mark association of both (descriptions of brethren;) for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both (do not inherit together,) because reciprocation is not expressed by the text. Moreover, since the text exhibits the conjunctive particle "and," in the phrase "and such brothers as were reunited &c." and the rule (of grammar) expresses, that a conjunctive compound is used when the sense of the conjunctive particle is denoted; the assertion, that reciprocation is not ex-

pressed by the text, would imply, that even the conjunction does not bear that sense [viz., the sense of reciprocation.]

34. Therefore, if whole brothers and half brothers only (not reunited brothers of either description) be the claimants, the succession devolves exclusively on the whole brothers. Accordingly *Vṛhat Menu* says, "If a son of the same mother survive, the son of her rival shall not take the wealth. This rule shall hold good in regard to the immoveable estate. But, on failure of him, (the half brother) may take the heritage."

35. This rule shall hold good in regard to the immoveable estate. This rule is relative to divided immoveables. For, immediately after treating of such (property) *Yama* says, "The whole of the undivided immoveable estate appertains to all the brethren; but divided immoveables must on no account be taken by the half brother."

36. (All the brethren.) Whether of the whole blood or of the half blood. But, among whole brothers, if one be reunited after separation, the estate belongs to him. If an unassociated whole brother and reunited half brother exist, it devolves on both of them. If there be only half brothers, the property of the deceased must be assigned in the first instance to a reunited one; but, if there be none such, then to the half brother who is not reunited.

37. Accordingly the plural number is employed in the term "brothers," (Sect. 1. § 4) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else it would be unmeaning.

38. The text, "a reunited (brother) shall keep the share of his reunited co-heir," (§ 10) is intended to provide a special rule governed by the circumstance of reunion after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

39. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers, or uncles, or the like, the reunited parcener shall take the heritage: for the text does not specify the particular relation; and all [these relations] were premised in the preceding text (Sect. 1. § 4); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

40. Thus the brother's right of succession has been explained.

## SECTION VI.

*On the Nephew's right of Succession,—and that of other heirs.*

1. On failure of brothers, the brother's son is heir: for the text of *Vishnu*, having declared "it goes to the brothers," proceeds "After them it descends to the brother's " sons."

2. Among these, the succession devolves first on the son of a uterine [or whole] brother; but, if there be none, it passes to the son of the half brother. For the text expresses, "An uterine [brother] shall retain or deliver the allotment of his uterine relation" (Sect. 5. § 10.) Indeed the son of the half brother, being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased owner, is inferior to a son of a whole brother [who is giver of oblations to the grandfather in conjunction with the mother of the deceased.]

3. Nor can it be pretended that the step-mother, grand-mother and great-grandmother take their places at the funeral repast, in consequence of [ancestors being deified] with their wives: for the terms "mother"

(grand-mother and great-grandmother) &c. (in such texts as the following) bear their original sense of 'his own natural mother,' 'father's natural mother,' and 'grandfather's natural mother,' and it is by those terms that they are described as taking their places at the funeral repast. Thus it is said, "A mother tastes with her husband the funeral repast consisting of oblations to the manes; and the paternal grandmother with her husband; and the paternal great-grandmother with "her's." But the introduction of step-mothers and the rest to a place at the periodical obsequies, is expressly forbidden. Thus the sage declares, "Whosoever die, whether man or woman, without male issue, for such person shall be performed funeral rites peculiar to the individual, but no periodical obsequies."

4. Besides, the command for the celebration of the funeral repast in honour of ancestors with their wives, is of invariable exigency; as it is universally acknowledged: but, since there are not step-mothers in every instance, the precept must relate to the natural mother; for the association of the variable and invariable exigency of the same command would be a contradiction.

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late proprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great-grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle.

6. Accordingly (since superior benefits are conferred by such a successor,) the brother's grandson excludes the paternal uncle; for he is a giver of oblations to the deceased owner's father who is the person principally considered.

7. But the brother's great-grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle: for he is not a giver of oblations, since he is distant in the fifth degree. Thus *Menu* says, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings: but the fifth has no concern with them." By this passage the fifth in descent is debarred.

8. But, on failure of heirs of the father down to the great-grandson, it must be understood, that the succession devolves on the father's daughter's son [in preference to the uncle;] in like manner as it descends to the owner's daughter's son [on failure of the male issue, in preference to the brother.]

9. The succession of the grandfather's and great-grandfather's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text "for even the son of a daughter delivers him in the next world, like the son of a son," is equally applicable; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake.

10. Accordingly *Menu* has not separately propounded their right of inheritance: for they are comprehended under the two passages, "To three must libations of water be made &c.," and "To the nearest kinsman (*sapinda*) the inheritance next belongs." *Yājñavalkya* likewise uses the term "gentiles" or kinsmen (*gotraja*) for the purpose of indicating the right of inheritance of the father's and grandfather's daughter's son, as

sprung from the same line, in the relative order of the funeral oblation and for the further purpose of excluding females related as *sapindas*, since; these also sprung from the same line.

11. Accordingly [since they are excluded,] *Baudhāyana*, after promising "A woman is entitled," proceeds "not to the heritage; for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit." The construction of this passage is 'a woman is not entitled to the heritage.' But the succession of the widow and certain others [viz. the daughter, the mother and the paternal grandmother,] takes effect under texts, without any contradiction to this maxim.

12. On failure of any lineal descendant of the paternal great-grandfather, down to the daughter's son, who might present oblations in which the deceased would participate; to intimate, that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, *Yājñavalkya* employs the term "cognates" (*bandhu*.) But *Menu* has indicated it only by a passage declaratory of succession according to the nearness of the oblation.

13. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest: for it is by means of wealth, that a person becomes a giver of oblations. Two motives are indeed declared for the acquisition of wealth: one temporal enjoyment, the other the spiritual benefit of alms and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly *Vṛhaspati* says, "Of property which descends by inheritance half should carefully be set apart for the benefit of the deceased owner to defray the charges of his monthly, six-monthly and annual obsequies." So *Apastamba* ordains, "Let the pupil or the daughter apply the goods to religious purposes for the benefit of the deceased." By saying "to defray the charges of his monthly, &c., obsequies" his participation, and by directing "religious purposes" his spiritual benefit are stated as reasons. Accordingly the sage says, "Wealth is useful for alms and for enjoyment." It is reasonable, therefore, that, on failure of kindred who might present oblations in which he would participate, the succession should devolve on the maternal uncle and the rest, who present oblations which he has bound to offer.

14. Accordingly [since the succession devolves on heirs down to the maternal uncle and the rest, in the order of oblations in which the deceased may participate, or which he was bound to offer;] *Menu*, considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made, &c." "To the nearest kinsman the inheritance next belongs;" (vide § 7. and 17) proceeds thus, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil."

15. The [distant kinsman (*saculya*) is the descendant of the paternal grandfather's grandfather or other remote ancestor. Such relatives are denominated *Samnodacas*. Their order of succession is in the series as exhibited. On failure of such heirs [down to the *Samanodaca*] the succession devolves on the spiritual preceptor, the pupil &c.

16. Otherwise [if the text of *Menu* do not intend the maternal uncle and the rest,] how is the admission of maternal uncles and others affirmed without contradiction to *Menu*? Therefore this meaning is intended by him in the passage above cited; and there is no contradiction.



17. Accordingly, having declared, while treating of inheritance, "To three must libations of water be made; to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them;" he adds, "To the nearest kinsman (*sapinda*) the inheritance next belongs," for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of *sapinda* has been declared by a distinct text, ("Now the relation of *sapinda* or men connected by the funeral cake, ceases with the seventh person;") and the right of the fourth in descent to inherit is declared by the text "To the nearest kinsman the inheritance next belongs," the passage, which begins "To three must libations be made &c.," would be superfluous. It cannot be said, that it is intended to direct the celebration of the funeral repast in honour of three ancestors; for it is inserted in the midst of a disquisition concerning inheritance; and the funeral repast is ordained by a different text. Thus *Menu* says, "Let the householder honour the sages by duly studying the *Véda*; the gods by oblations to fire as ordained by law; the manes, by pious obsequies; men, by supplying them with food; and spirits, by gifts to all animated creatures."

18. Nor should it be pretended, that the text [of *Menu*, "To the nearest *sapinda* &c." § 17] is intended to indicate nearness of kin according to the order of birth, and not according to the presentation of offerings: for the order of birth is not suggested by the text. But *Menu*, declaring, that oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of [benefits by] presentation of oblations.

19. Therefore a kinsman, who is allied by a common oblation as presenting funeral offerings to three persons in the family of the father, or in that of the mother, of the deceased owner, such kinsman having sprung from his family though of different male descent, as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir:] and the text ("To three must libations of water be made," &c., § 7) is intended to propound the succession of such kinsmen; and the subsequent passage ("To the nearest *sapinda*, &c.," § 17) must be explained as meant to discriminate them according to their degrees of proximity.

20. The order of succession then must be understood in this manner: on failure of the father's daughter's son or other person who is a giver of three oblations (presented to the father, &c.) which the deceased shares or which he was bound to offer, the succession devolves in the next place on the maternal uncle and others [namely, his son or grandson] who offer oblations to the maternal grandfather and the rest which the deceased was bound to present.

21. But on failure of kin in this degree, the distant kinsman (*saculya*) is successor. For *Menu* says, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil." The distant kinsman (*saculya*) is one who shares a divided oblation (Sect. 1. § 37) as the grandson's grandson or other descendant within three degrees reckoned from him; or as the offspring of the grandfather's grandfather or other remoter ancestor.

22. Among these claimants [whether ascending or descending], th

grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of oblations which they offer. [These descendants are therefore heirs.] On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of oblations presented to the paternal grandfather's grandfather and other ancestors who are sharers of the residue of oblations which the deceased was bound to offer.

23. If there be no such distant kindred, the *Samanodacas*, or kinsmen allied by a common libation of water, must be admitted to inherit, as being signified by the term *saculya* [conformably with *Baudhāyana's* explanation of it: Sect. 1. § 37]

24. On failure of these, the spiritual preceptor [or instructor in knowledge of the *veda*] is the successor. In default of him, the pupil [or student of the *veda*] is heir: by the text of *Menu*, "or the spiritual preceptor or the pupil." (§ 14.) On failure of him likewise, the fellow student; by the text [of *Yājñyavalkya*] "a pupil and a fellow student." (Sect. 1. § 4.)

25. In default of these claimants, persons bearing the same family name (*gotra*) are heirs. On failure of them, persons descended from the same patriarch are the successors. For the text of *Gautama* expresses "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage [of a childless man; or his widow shall partake.]"

26. On failure of all heirs as here specified, let the priests take the estate. Thus *Menu* says, "On failure of all those, the lawful heir are such *Brahmanas*, as have read the three *vedas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost." Virtue, which would be extinguished by the ample enjoyment [of its reward,] but is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on *Brahmanas*, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. In default of them, the king shall take the wealth: excepting however, the property of *Brahmana*. A failure of descendants from the same patriarch and of persons bearing the same family name, as well as of *Brahmanas*, must be understood as occurring when there are none inhabiting the same village: else an escheat to the king could never happen.

28. If the right of the father's daughter's son, and of the maternal uncle and the rest, be not considered as intended by the text, "To three must libations of water be made, &c." (§ 7) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified. Nor can this be deemed an admissible inference, since they are indicated by *Yājñyavalkya* under the terms "Gentiles and cognates" (Sect. 1. § 4). Consequently it must be affirmed, that they have been indicated by *Menu* in this text (§ 7). Therefore such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

29. Accordingly [since inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit,] the equal right of the son, the son's son and the son's grandson, is proper: for their equal pretensions are declared in the text, "By a son a man conquers worlds," &c. (Sect. 1. § 31), and in other similar passages. They equally present oblations to the deceased. Hence also the grandson and great-grandson, whose fathers are living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father; the law providing, that oblations shall not be presented, overpassing a living person. Otherwise these [sons and grandsons, whose fathers are living,] would have the same right of inheritance with

those whose fathers are deceased. Or the son alone would inherit as nearest of kin in the order of the birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson, and great-grandson. Therefore it must be inferred, that the parity in their right of inheritance arises from the equal benefits conferred by them.

30. In like manner the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order.

31. This doctrine, [that inheritance is deducible from reasoning and founded on services rendered.] must be admitted to have the assent of *Menu* and other sages : for there can be no other purpose of propounding, under the head of inheritance, the superior benefits derived from sons and the rest ; and the exoneration of the father from debt is stated as a reason for the son's inheriting : (' By the eldest son a man is exonerated from debt to his ancestors ; therefore that son is entitled to take the heritage.' Sect. 1. § 32) redemption also is exhibited as a cause of succession to property : (' Even the son of a daughter delivers him in the next world like the son of a son,') and there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance [of their ancestors ;] and the passage, " To three must libations of water be made, &c." Sec. (§ 7) would be unnecessary [if such were not the purpose ;] and the exclusion of persons impotent, degraded, blind from their birth and so forth, is an apposite rule as founded upon their rendering no services ; [but not so as grounded on the mere letter of the law :] and it is troublesome to establish an assumed precept for debarring those before whom an heir intervenes ; [as must be done upon any other supposition :] and it is reasonable, that the wealth, which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him.

32. This doctrine, as illustrated by the irreproachable *Udôyota*, should be respected by the wise.

33. If the learned be yet unsatisfied [with relying on reason for the ground of the law of inheritance,] this doctrine may be derived from express passages of law. Still the same interpretation of both texts (of *Menu*, § 7 and 17) must be assumed. But let this be. What need is there of expatiating ?

34. Excepting the property of a *Brahmana*, let the king take the wealth [on failure of heirs]. So *Menu* directs, " The property of a *Brahmana* shall never be taken by the king : this is a fixed law. But the wealth of the other classes, on failure of all [heirs,] the king may take." By the term " all " is signified every heir including the *Brahmana* (§ 26.)

35. The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil and the holy preceptor, take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus *Yājñavalkya* says, " The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."

36. Goods, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be understood to be a professed one : for, abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations.

37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

# EXTRACTS

FROM

## COLEBROOKE'S MITACSHARA.

### CHAPTER I.

#### SECTION I.

*Definition of Inheritance, and of Partition.—Disquisition on Property.*

1. Evidence, human and divine, has been thus explained with [its various] distinctions; the partition of heritage is now propounded by the image of holiness.

2. Here the term heritage (*daya*) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner—

3. It is of two sorts: unobstructed (*apratibandha*), or liable to obstruction (*sapratibandha*.) The wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles), brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants.]

4. Partition (*vibhaga*) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

5. Entertaining the same opinion. *Nareda* says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage." "Paternal" here implies any relation which is cause of property. "By sons" indicates propinquity in general.

6. The points to be explained under this [head of inheritance] are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion.] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

8. [It is alleged that] the inferring of property from the sacred code alone is right, on account of the text of *Gautama*; "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a

*Brahmana* an additional mode; conquest for a *Cshatriya*; gain for a *Vaisya* or *Sudra*." For, if property were deducible from other proof, this text would not be pertinent. So the precept, ("A *Brahmana*, who seeks to obtain anything, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief;") which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrong-doer who has taken what was not given to him, would be irrelevant, if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do; but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food; and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses; and so, in the other cases. But here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. Moreover, such as are conversant with the science of reasoning deem regulated means of acquisition a matter of popular recognition. In the third clause of the *Lipsa sutra* the venerable author has stated the adverse opinion, after [quoting] an objection to it, that, 'if restrictions relative to the acquisition of goods regard the religious ceremony, there could be no property, since proprietary right is not temporal;' [by showing, that] 'the efficacy of acceptance and other modes of acquisition in constituting proprietary right is matter of popular recognition.' Does it not follow, 'if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice.' [Answer] 'It is a blunder of any one who affirms that acquisition does not produce a proprietary right, since this is a contradiction in terms.' Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner: 'Therefore a breach of the restriction affects the person, not the religious ceremony;' and the meaning of this passage is thus expounded. 'If restrictions respecting the acquisition of chattels regard the religious ceremony, its celebration would be perfect with such property only as was acquired consistently with those rules; and not so if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the man if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction regarding acquisitions affects the

person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule ; and it is an offence on the part of a man, because he has violated an obligatory rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property : because otherwise there would be no completion of a religious ceremony.

11. It should not be alleged that even what is obtained by robbery and other nefarious means would be property. For proprietary right in such instances is not recognised by the world ; and it disagrees with received practice.

12. Thus, since property obtained by acceptance or any other [sufficient] means is established to be temporal, the acceptance of alms, as well as other [prescribed] modes for a *Brahmana*, conquest and similar means for a *Cshatriya*, husbandry and the like for a *Vaisya*, and service and the rest for a *Sudra*, are propounded as restrictions intended for spiritual purposes ; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intended heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner.] "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. 'For a *Brahmana*, that which is obtained by acceptance or the like is additional," not common [to all the tribes]. "Additional" is understood in the subsequent sentence : 'for a *Cshatriya*, what is obtained by victory, or by amercement or the like is peculiar. In the next sentence, "additional" is again understood : 'what is gained or earned by agriculture, keeping of cattle, [traffic] and so forth, is for a *Vaisya* peculiar ; and so is, for a *Sudra*, that which is earned in the form of wages by obedience to the regenerate and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes (as the driving of horses, which is the profession of the *Sutas* and so forth), is indicated by the word "earned" (*nirvishta*), for all such acquisitions assume the form of wages or hire ; and the noun (*nervesa*) is exhibited in the *tricandi* as signifying wages.

14. As for the precent respecting the succession of the widow and the daughters, &c., the declaration [of the order of succession] even in that text is intended to prevent mistake, although the right of property be a matter familiar to the world, where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark that, if property were temporal, it could not be said "my property has been taken away by him ;" that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

16. The purpose of the preceding disquisition is this. A text expresses "When *Brahmanas* have acquired wealth by a blamable act, they are cleared by the abandonment of it, with prayer and rigid austerity." Now, if property be deducible only from sacred ordinances, that which has

been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs, and the atonement above-mentioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame attaches to them, since *Menu* declares "There are seven virtuous means of acquiring property, viz.,—inheritance, &c."

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

18. Of these [positions], that of property arising from partition is right, since a man, to whom a son is born, is enjoined to maintain a holy fire: for, were property vested by birth alone, the estate would be common to the son as soon as born, and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that which is obtained from the liberality of the father previous to separation, would not be pertinent; since no partition of it can be supposed, for it has been given by consent of all parties. But *Nareda* does not propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition, and any favour conferred by a father."

20. So the text concerning an affectionate gift ("What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away, excepting immoveable property"): would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immoveable property" with the terms "what has been given" [in the text last cited]; for that would be a forced construction by connection of disjointed terms.

21. As for the text "The father is master of the gems, pearls and corals, and of all [other moveable property]: but neither the father nor the grandfather is so of the whole immoveable estate;" and this other passage "By favour of the father, clothes and ornaments are used, but immoveable property may not be consumed, even with the father's indulgence;" which passages forbid a gift of immoveable property through favour; they both relate to immoveables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons; but it appears from this text alone, that the gems, pearls and other moveables belong exclusively to the father while the immoveable estate remains common.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly (since the demise of the owner is a cause of property), there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

23. To this the answer is; It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied: but the term partition

is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of *Gautama* expresses "Let ownership of wealth be taken by birth; as the venerable teachers direct."

24. Moreover the text above cited. "The father is master of the gems, pearls, &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immoveables which have descended from the paternal grandfather: since the text expresses "neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. But the text of *Vishnu* (§ 20), which mentions a gift of immoveables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for by the passages [above cited, as well as others not quoted, viz.] "The father is master of the gems, pearls, &c. (§ 21)," the fitness of any other but immoveables for an affectionate gift was certain.

26. As for the alleged disqualification for religious duties which are prescribed by the *vāla*, and which require for their accomplishment the use of wealth (§ 18), sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance]

27. Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although] the father have independent power in the disposal of effects other than immoveables, for indispensable acts of duty and for purposes prescribed by text of law, as gifts through affection, support of the family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unborn, and they who are still in the womb, require the means of support no gift or sale should, therefore, be made."

28. An exception to it follows: "Even a single individual may conclude a donation, mortgage, or sale, of immoveable property, during a season of distress, for the sake of the family, and specially for pious purposes."

29. The meaning of that text is this: while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like; or while brothers are so and continue unseparated; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.

30. The following passage "Separated kinsmen, as those who are unseparated are equal in respect of immoveables; for one has not power over the whole, to make a gift, sale or mortgage;" must be thus interpreted



‘among unseparated kinsmen, the consent of all is indispensably requisite, because on one is fully empowered to make an alienation, since the estate is in common :’ but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united : it is not required, on account of any want of sufficient power, in the single owner ; and the transaction is consequently valid even without the consent of separated kinsmen.

31. In the text, which expresses that “Land passes by six formalities ; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water,” consent of townsmen is required for the publicity of the transaction, since it is provided, that “Acceptance of a gift, especially of land, should be public :” but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. By gift of gold and of water.] Since the sale of immoveables is forbidden (“In regard to the immoveable estate, sale is not allowed ;” it may be mortgaged by consent of parties interested ;) and since donation is praised (“Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss ;”) if a sale must be made, it should be conducted, for the transfer of immoveable property, in the form of a gift, delivering with it gold and water [to ratify the donation.]

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text (Sec. 5. § 3.)

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## SECTION II.

*Partition equal or unequal.—Four periods of partition.—Provision for wives.—Exclusion of a son who has a competence.*

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points the author says, “When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose] all may be equal sharers.”

2. When a father wishes to make a partition, he may at his pleasure, separate his children from himself, whether one, two or more sons.

3. No rule being suggested (for the will is unrestrained) the author adds, by way of restriction, “he may separate (for this term is again understood) the eldest with the best share,” the middlemost, with a middle share, and the youngest with the worst share.

4. This distribution of best and other portions is propounded by *Menu* : “The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels ; for the middlemost, half of that ; for the youngest, quarter of it.”

5. The term “either” (§ 1) is relative to the subsequent alternative “or all may be equal sharers.” That is, all, namely the eldest and the rest, should be made partakers of equal portions.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper : for equal ownership will be declared.

7. One period of partition is when the father desires separation, as expressed in the text "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons; against the father's wish: as is shown by *Nareda*, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead,") and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished." Here the words "let sons regularly divide the wealth" are understood. *Goutama* likewise, having said "After the demise of the father, let sons share his estate," states a second period, "Or when the mother is past child-bearing;" and a third, "While the father lives, if he desire separation." So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That *Sancho* declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition; "If he make the allotments equal, his wives to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers or like portions."

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those of sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half."

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by *Apastamba*; "The furniture in the house and her ornaments are the wife's [property]."

11. To the alternative before stated (§ 1) the author propounds an exception; "The separation of one, who is able to support himself and is not desirous of participation, may be completed by giving him some "trifle."

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, anything whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. The distribution of greater and less shares has been shown (§ 1.) To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards

set aside: as is declared by *Menu* and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, *Nareda* declares "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."

### SECTION III.

#### *Partition after Father's decease.*

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode. "Let sons divide equally both the effects and the debts after (the demise of) their two parents."

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equally.] A rule respecting the mode is by this declared in equal shares only, should they divide the effects and debts.

3. But *Menu*, having premised "partition after the death of the father and mother," and having declared "The eldest brother may take the patrimony entire, and the rest may live under him as under their father;" has exhibited a distribution with deductions, among brethren [separating after the death of their father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it." The twentieth part of the whole amount of the property (to be divided), and the best of all the chattels, must be given (by way of deduction) to the eldest; half of that, or a fortieth part, and a middling chattel should be allotted to the middlemost; and a quarter of it, or the eightieth part with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parent's decease; allotting to shares to the eldest, one and a half to the next born, and one a piece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled." The author himself has sanctioned an unequal distribution when a division is made during the father's life time ("Let him either dismiss the eldest with the best share &c." Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for] it secures not celestial bliss:" as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;" and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to *Mitra* and *Varuna*."

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another.] and as the slaying of a cow for a victim, are disused, so is partition with deductions [in favor of elder brothers]."

6. APASTAMBA also, having delivered his own opinion, "A father, making a partition in his lifetime, should distribute the heritage equally among his sons;" and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the eldest is heir;") and having exhibited, as the notion of others, a distribution with deductions ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son; the car appertains to the father; and the furniture in the house and her ornaments are the wife's; as also the property [received by her] from kinsmen: so some maintain;") has expressly forbidden it as contrary to the law; and has himself explained its inconsistency with the sacred codes: "It is recorded in scripture, without distinction, that *Menu distributed his heritage among his sons.*"

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason a restriction is ordained, that brethren should divide only in equal shares.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property; "The daughters share the residue of their mother's property, after payment of her debts."

9. Let the daughters divide their mother's effects remaining over and above the debts; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts; and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus;" the woman's property goes to her daughters because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

11. On the subject [of daughters] a special rule is propounded by *Gautama*: "A woman's property goes to her daughters, unmarried, or unprovided." His meaning is this: if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed: and this term signifies 'destitute of wealth.'

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds "And the issue succeeds in their default."

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts;") is here expressly declared for the sake of greater perspicuity.

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## SECTION IV.

*Effects not liable to Partition.*

1. The author explains what may not be divided "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by science."

2. That, which had been acquired by the coparcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other co-heirs: the person recovering it shall take such property.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So, *Sancha* ordains "Land [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

4. In regular succession.] Here the word "inherited" must be understood.

5. He need not give up to the co-heirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning the acquirer shall retain such gains.

6. Here the phrase "any thing acquired by himself, without detriment to the father's estate" must be everywhere understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage without waste of the patrimony; what is redeemed, of the hereditary estate, without expenditure of ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend as the return of an obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form termed *Asura* or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father.

7. Thus since the phrase "without detriment to the father's estate" is in every place understood; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of *Nareda*: "He, who maintains the family

of a brother studying science, shall take, be he ever so ignorant, a share of the wealth, gained by science." Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by *Catyayana*: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, anything obtained by mere acceptance would be exempt from partition, contrary to established practice.

10. This [condition, that the acquisition be without detriment to the patrimony,] is made evident by *Menu*: "What a brother has acquired by his labour, without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science."

11. By labour] by science, war, or the like.

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known; but a denial implies the possible supposition of the contrary.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science;" in this manner 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder; grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living; that is accordingly denied.

14. The argument is erroneous: since there is not here a denial of what might be supposed; but the text is a recital of that which was demonstratively true: for most texts, cited under this head, are mere recitals of that which is notorious to the world.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal sharers of that which is acquired by them in concert:" and it therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

16. Other things exempt from partition, have been enumerated by *Menu*: "Clothes, vehicles, ornaments, prepared food, women, sacrifices, and pious acts, as well as the common way, are declared not liable to distribution."

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father's decease to the person who partakes of food at his obsequies: as directed by *Vrihaspati*: "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the

person who partakes of the funeral repast." But new clothes are subject to distribution.

18. Vehicles] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by *Menu*; "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such ornaments, as are worn by women purging the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe." It appears from the condition here specified ("such ornaments as are worn,") that those, which are not worn, may be divided.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares] must not be distributed by means of the value; but is to be used [by the co-heirs] by turns.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided by the value, but should be employed in labour [for the co-heirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of *Gautama* forbids it. "No partition is allowed in the case of women connected [with the father or with one of the co-heirs]."

23. The term *yogacshema* is a conjunctive compound resolvable into *yoga* and *cshema*. By the word *yoga* is signified a cause of obtaining something not already obtained: that is a sacrificial act to be performed with fire, consecrated according to the *Veda* and the law. By the term *cshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained: such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as *Laugacshi* declares. "The learned have named a conservatory act *csheema*, and a sacrificial one *yoga*; both are pronounced indivisible: and so are the bed and the chair."

24. Some hold, that by the compound term *yogacshema*, those who effect sacrificial and conservatory acts (*yoga* and *cshema*), are intended, as the king's counsellors, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things, are meant.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. The exclusion of land from partition, as stated by *Usanas*, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of *Brahmana* by women of the military and other inferior tribes: for it is ordained [by *Vrihaspati*:] "Land obtained by ac-

ceptance of donation, must not be given to the son of a *Cshatriya* or other wife of inferior tribe : even though his father give it to him, the son of the *Brahmani* may resume it, when his father is dead."

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition. The supposition, that anything, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of *Vasishtha*. "He, among them, who has made an acquisition, may take a double portion of it."

30. The author propounds an exception to that maxim. "But, if the common stock be improved, an equal division is ordained."

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place ; and a double share is not allotted to the acquirer.

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#### SECTION V.

##### *Equal rights of Father and son in property ancestral.*

1. The distribution of the paternal estate among sons has been shown ; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among grandsons by different fathers, the allotment of shares is according to the fathers."

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons : still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this : if unseparated brothers die leaving male issue ; and the number of sons be unequal, one having two sons, another three, and a third four ; the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue ; the same method should be observed : the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place ; since it has been directed, that shares shall be allotted in right of the father, if he be deceased : or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions ; to obviate this doubt the author says, "For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels [which belonged to him.]"

4. Land] a rice field or other ground. A corrody] So many leaves receivable from a plantation of betle pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or ether moveables.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by consequence or other means [as commerce,



agriculture, or service,] the ownership of father and son is notorious : and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice ; nor has he a double share.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," (§ 1.) although the right be equal.

7. The first text "when the father makes a partition, &c.," (Sect. 2 § 1.) relates to property acquired by the father himself. So does that which ordains a double share : "Let the father, making a partition, reserve two shares for himself." The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age ;" must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live ;" must also be referred to the same subject.

8. Thus, while the mother is capable of bearing more sons and the father retains his wordly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather : but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependant.

10. Consequently the difference is this : although he have a right by birth in his father's and in his grandfather's property ; still, since, he is dependant on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property : but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.]

11. *Menu* likewise shows, that the father, however, reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfathers ; declaring, as he does ("If the father recover paternal wealth, not recovered by his co-heirs, he shall not, unless willing, share it with his sons ; for in fact it was acquired by him :") that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons ; any more than he need give up his own acquisitions.

## CHAPTER II.

### SECTION I.

*Right of the widow to inherit the estate of one, who leaves no male issue.*

1. THAT sons, principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes] on failure of them, is next declared.

2. "The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student : on failure of the first among these, the next in order is indeed heir to the estate of

one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."

3. He, who has no son of any among the twelve descriptions above stated (C. I. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir or successor, is that person, among such as have been here enumerated, (*viz.*, the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the *Murdhavasicta* and others in the direct series of the classes, or *Suta* and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

5. In the first place, the wife shares the estate. "Wife" (*patni*) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connection with religious rites.

6. *Vridhha Menu* also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share." *Vrihad-Vishnu* likewise ordains it: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother." So does *Catyayana*: "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, the daughter inherits if unmarried." And again, in another place: "The widow, being a woman of honest family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue." Also *Vrihaspati*: "Let the wife of a deceased man, who left no male issue take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren, be present."

7. Passages, adverse to the widow's claim, likewise occur. Thus *Nereda* has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance." *Menu* propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, the father shall take the inheritance, or the brothers." He likewise states the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, the mother shall take the estate: and, the mother also being dead, the father's mother shall take the heritage." *Sancha* also declares the successive rights of brothers, and of both parents, and lastly of the eldest wife: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife." *Catyayana* too says, "If a man die separate from his co-heirs, let his father take the property on failure of male issue; or successively the brother, or the mother, or the father's mother."

8. The application of these and other contradictory passages is thus explained by *Dharmaswara*: 'The rule, deduced from the texts [of *Yajñyavalkya*, &c.], that the wife shall take the estate, regards the widow of a separated brother: and that, provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance;" and other similar passages [as *Nareda's*, &c.] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of *Gautama*: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him."

9. 'The meaning of the text is this: persons, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estate, provided she seek progeny.'

10. *Menu* likewise shows by the following passage, that when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son." So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled."

11. '*Vasishtha* also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness:") thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.'

12. 'But, if authority for that purpose have not been received, the widow is entitled to a maintenance only; by the text of *Nareda*: "Let them allow a maintenance to his women for life."

13. 'The same (it is pretended) will be subsequently declared by the contemplative saint: "And their childless wives, conducting themselves aright must be supported; but such, as are unchaste, should be expelled and so, indeed, should those, who are perverse.'

14. 'Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites. Accordingly it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices: and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." "Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties: and not be assigned to women, to fools, and to people neglectful of holy obligations."

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text, ("The wife and the daughters also, &c.") nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne, by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate,

without having borne a son ; and the right of the son subsequently produced [by means of the appointment] does not ensue. But, if the offspring be the sole cause [of her claim,] the wife should not be recited as a successor : since, in that case, the son alone has a right to the goods.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong : for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman."

17. Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions. Now by here affirming the right of a widow who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared ; and therefore the wife ought not to be mentioned under the head [of succession to the estate] of one who leaves no male issue.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of *Gautama* : "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage ; or the widow of a childless man : and she may either [remain chaste, or may] seek offspring." This too is erroneous : for the sense, which is there expressed, is not 'If she seek to obtain offspring, she may take the goods of one who left no issue ;' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue ; or his widow takes his estate : and she may either seek to obtain progeny, or may remain chaste.' This is an instruction to her, in regard to her duty. For the particle (*va*) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared : "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share." And an authority to raise up issue is expressly condemned by *Menu* : "By regenerate men no widow must be authorized to conceive by any other ; for they, who authorize her to conceive by another, violate the primeval law."

19. But the text of *Vasishtha* "An appointment shall not be through covetousness ; must be interpreted : 'if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession ; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.'

20. As for the text of *Nareda*, "Let them allow a maintenance to his women for life ;" Since reunion of parceners had been premised (in a former text, viz., "The shares of reunited brethren are considered to be exclusively theirs.") it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceners ("Among brothers, if any one die without issue, &c.") For women's separate property is exempted from partition by this explanation of what had been before said : and a mere maintenance for the widow, is at the same time ordained.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;" will be subsequently shown to intend the wife of an impotent man and so forth.

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong; for, if everything, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and, charitable donations, burnt offerings and the rest are acts of religious duty; still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished; and, if that be the case, there is an inconsistency in the following passages of *Yajnyavalkya*, *Gautama* and *Menu*. "Neglect not religious duty, wealth or pleasure in their proper season." "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth or pleasure." "The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure.]"

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the *veda*] "Let gold be preserved," is intended not for religious ends, but for human purposes.

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c.]

25. The text of *Nareda*, which declares the dependence of women, ("A woman has no right to independence,") is not incompatible with their acceptance of property; even admitting their thralldom.

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c.") to be understood? The answer is, wealth, which was obtained [in charity] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow."

27. It is said by *Catyayana* "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges: but the goods belonging to a venerable priest, let him bestow on venerable priests." "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," or becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges;" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however

a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

28. This relates to women kept in concubinage: for the term employed is "females" (*yoshid.*) The text of *Nareda* likewise relates to concubines; since the word there used is "women" (*stri*). "Except the wealth of a *Brahmana* [property goes to the king on failure of heirs.] But a king, who is attentive to the obligations of duty, should give maintenance to the women of such persons. The law of inheritance has been thus declared."

29. But since the term "wife" (*patni*) is here employed, (§ 2) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a man, who was separated from his co-heirs and not reunited with them, dies leaving no male issue, his widow [if chaste] takes the estate in the first instance. For partition had been permitted; and reunion will be subsequently considered.

31. It must be understood, that the explanation, proposed by *Sricara* and others, restricting [the widow's succession [to the case of a small property, is refuted by the [following argument.] If there be legitimate sons it is provided, whether partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions." And again: "Of heirs dividing after the death of the father, let the mother also take an equal share." Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence, from the wealth of her husband, who died leaving no male issue.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed unmeaning.

33. Or suppose, that if the wealth be great, she takes precisely enough for her subsistence; but if small, she receives a share equal to that of a son. This again is wrong: for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12] suggest an allotment adapted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

34. Thus, in the instance of the *Chaturmasya* sacrifices, in the disquisition [of the *Mimansa*] on the passage *dwayoh pran ayanti*; where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the *Soma-yaga* extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (*uttara-vedi*) at the *Vaisvedeva* and *Sunasiriya* sacrifices, must be understood as a prohibition of such altar; [which should else be constructed those sacrifices as at a *Soma-yaga*:] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the *Soma-yaga*, but an exception to the express rule "prepare an *uttara vedi* at this sacrifice

[viz., at the *Chaturmasya* ;"] it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim : but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule ; and that the injunction, "prepare the *uttara-vedi* at this sacrifice," commands its construction at the two middle periods namely the *Varuna-praghasa* and *Sacamedha* with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of *Menu* ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,") as well as from that of *Sancha* ("The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it : or his eldest wife.") The succession of brothers, to the estate of one who leaves no male issue, is deduced : and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life : " this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest ; but, if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also ;") is propounded, on the controverted question whether the widow or the brothers inherit, to show, that first claim prevails. This opinion the reverend teacher does not tolerate : for he interprets the text. "Of him who leaves no son, the father shall take the inheritance, or the brothers ;" as not relating to the order of succession, since it declares an alternative ; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of *Sancha* too relates to a reunited brother.

36. Besides it does not appear either from this passage [of *Yajñya-walkya*] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence, "On the failure of the first among these, the next in order is heir ;" be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relate to wealth generally in the other instances (of the father and the rest,) the consequent defect of *variableness in the precept* (§ 33) affects this interpretation.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life." This passage of *Harita* is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of *Harita*,] it appears that a widow, not suspected of misconduct, has a right to take the whole property.

38. With the same view, *Sancha* has said "Or his eldest wife" (§ 7) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth ; and, like a mother, maintains any other headstrong wife [of her husband]. Thus all is unexceptionable.

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his co-heirs and not subsequently reunited with them, dies leaving no male issue.

## SECTION II.

*Right of the daughters and daughter's sons.*

1. On failure of her, the daughters inherit. They are named in the plural number (Section I. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

2. Thus *Catyayana* says, "Let the widow succeed to her husband's wealth, provided she be chaste; and in default of her, let the daughter inherit, if unmarried." Also *Vrihaspati*: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

3. If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried.")

4. If the competition be between an unprovided and enriched daughter, the unprovided one inherits; but, on failure of such, the enriched one succeeds: for the text of *Gautama* is equally applicable to the paternal, as to the maternal, estate. "A woman's separate property goes to her daughters, unmarried or unprovided."

5. It must not be supposed that this relates to the appointed daughter; for in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter," or the daughter appointed to be a son.)

6. By the import of the particle "also" (Sect. I. § 2.) the daughter's son succeeds to the estate on failure of daughters. Thus *Vishnu* says, "If a man leave neither son, nor son's son, nor [wife, nor female] issue, the daughter's sons shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons." *Menu* likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation and possess the inheritance."

## SECTION III.

*Right of the Parents.*

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenour of the text; Sect. 1. § 2.] since a conjunctive compound is declared to present the meaning of its several terms at once; and the omission of one term and retention of the other constitute an exception to that [complex expression;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (*matapitarau*) 'mother and father' when not reduced [to the simpler form *pitarau* 'parents'] by the omission of one term and retention of the other; it follows from the order of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance; and, on failure of her, the father.



3. Besides the father is a common parent to other sons, but the mother is not so : and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance conformably with the next "To the nearest *sapinda*, the inheritance next belongs."

4. Nor is the claim in virtue of propinquity restricted to (*sapindas*) kinsmen allied by funeral oblations : but, on the contrary, it appears from this very text, (§ 3.) that the rule of propinquity is effectual, without any exception, in the case of (*samanodacas*) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Therefore since the mother is the nearest of the two parents it is most fit, that she should take the estate. But on failure of her, the father is successor to the property.

#### SECTION IV.

##### *Right of the brothers.*

1. On failure of the father, brethren share the estate. Accordingly *Menu* says, "Of him, who leaves no son, the father shall take the inheritance or the brothers."

2. It has been argued by *Dharmaswara*, that, under the following text of *Menu*, "Of a son dying childless, the mother shall take the estate ; and, the mother also being dead, the father's mother shall take the heritage ;" "even while the father living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession ; because wealth, devolving upon him, may go to sons dissimilar by class ; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe : and therefore the paternal grandmother takes the estate."

3. The only teacher (*Viswarupa*) does not assent to that doctrine : because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited : "The sons of a *Brahmana*, in the several tribes, have four shares, or two, or one."

4. But the passage of *Menu*, expressing that "The property of a *Brahmana* shall never be taken by the king," intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe.]

5. Among brothers, such as are of the whole blood, take the inheritance in the first instance, under the text before cited : "To the nearest *sapinda*, the inheritance next belongs." Since those of the half blood are remote through the difference of the mothers.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

8. In case of competition between brothers and nephews, the nephews have no title to the succession : for their right of inheritance is declared to be on failure of brothers ("both parents, brothers likewise, and their sons." Sect. 1. § 2.)

9. However when a brother has died leaving no male issue (nor other nearer heir,) and the estate has consequently devolved on his brothers in-

differently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father; and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

## SECTION V.

*Succession of kindred of the same family name : termed Gotraja, or gentiles.*

1. If there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

2. In the first place the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage:" no place, however, is found for her in the compact series of heirs from the father to the nephew: and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must therefore of course succeed immediately after the nephew; and thus there is no contradiction.

3. On failure of the paternal grandmother, the (*gotraja*) kinsmen sprung from the same family with the deceased and (*sapinda*) connected by funeral oblations namely the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (*bāndhu* Sect. 6.)

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

5. On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by oblation.

6. If there be none such, the succession devolves on kindred connected by libations of water: and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food: or else, as far as the limits of knowledge as to birth and name extend. Accordingly *Vrihat-Menu* says "The relation of the *sapindas*, kindred connected the funeral oblation, ceases with the seventh person: and that of *samanodacas* or those connected by a common libation of water, extend to the fourteenth degree; or as some affirm, it reaches as far as the memory of birth and name extends. This is signified by or *gotra* or the relation of family name."

## SECTION VI.

*On the succession of cognate kindred, bāndhu.*

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother: as is declared by the following text. "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle,

must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned his mother's cognate."

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance: on failure of them, his father's cognate kindred: or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

#### SECTION VII.

*On the succession of strangers upon failure of the kindred.*

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of *Apastamba*. "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or failing him, the disciple."

2. If there be no pupil, the fellow student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow student.

3. If there be no fellow students, some learned and venerable priest should take the property of a *Brahmana*, under the text of *Gautama*: "Venerable priest should share the wealth of a *Brahmana*, who leaves no issue."

4. For want of such successors, any *Brahmana*, may be the heir. So *Menu* declares: "On failure of those, the lawful heirs are such *Brahmanas*, as have read the three *Vedas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."

5. Never shall a king take the wealth of a priest: for the text of *Menu* forbids it: "The property of a *Brahmana* shall never be taken by the king: this is a fixed law." It is also declared by *Nareda*: "If there be no heir of a *Brahmana's* wealth, on his demise, it must be given to a *Brahmana*. Otherwise the king is tainted with sin."

6. But the king, and not a priest, may take the estate of a *Kshatriya* or other person of a inferior tribe on failure of heirs down to fellow student. So *Menu* ordains; "But the wealth of the other classes on failure of all [heirs,] the king may take."

#### SECTION VIII.

*On succession to the property of a hermit or of an ascetic.*

1. It has been declared, that sons and grandsons [or great grandsons] take the heritage; or, in failure of them, the widow or other successors. The author now propounds an exception to both those laws: "The heirs of a hermit, of an ascetic, and of a professed student, are in their order; the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are, in order (that is, in the inverse order), the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The student (*brahmechari*) must be a professed or perpetual one : for the mother and the rest of the natural heirs take the property of a temporary student ; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.]

4. A virtuous pupil takes the property of a *yati* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

5. A spiritual brother and associate in holiness takes the goods of a hermit (*vanaprastha*.) A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

6. But, on failure of these (namely, the preceptor and the rest,) any one associated in holiness takes the goods ; even though sons and other natural heirs exist.

7. Are not those, who have entered into a religious profession, unconcerned with hereditary property ? since *Vasishtha* declares, " They, who have entered into another order, are debarred from shares." How then can there be a partition of their property ? Nor has a professed student a right to his own acquired wealth ; for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth.] are forbidden to him. And, since *Gautama* ordains, that " A mendicant shall have no hoard ;" the mendicant also can have no effects by himself acquired.

8. The answer is, a hermit may have property : for the text [of *Yajnyavalkya*] expresses " The hermit may make a hoard of things sufficient for a day, a month, six months, or a year ; and, in the month of *Asvina*, he should abandon [the residue of] what has been collected." The ascetic too has clothes, books and other requisite articles : for a passage [of the *Veda*] directs, that " he should wear clothes to cover his privy parts" and a text [of law] prescribes, that " he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body ; and he possesses also other effects.

9. It was therefore proper to explain the partition or inheritance of such property.

#### SECTION IX.

##### *On the reunion of kinsmen after partition.*

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. " A reunited [brother] shall keep the share of his reunited [co-heir,] who is deceased ; or shall deliver it to [a son subsequently] born."

2. Effects, which had been divided and which are again mixed together, are termed reunited. He to whom such appertain, is a reunited parcener.

3. That cannot take place with any person indifferently ; but only with a father, a brother, or a paternal uncle : as *Vrihaspati* declares. " He,

who being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed reunited."

4. The share or allotment of such a reunited parcener deceased, must be delivered by the surviving reunited parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

5. The author states exception to the rule, that a reunited brother shall keep the share of his reunited co-heir: "But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine relation."

6. The words "reunited brother" and "reunited co-heir" are understood. Hence the construction, as in the preceding part of the text is this: The allotment of a reunited brother of the whole blood, who is deceased, shall be delivered, by the surviving reunited brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being a reunited parcener, not a half brother who is so, takes the estate of the reunited uterine brother. This is an exception to what had been before said (§ 1.)

7. Next, in answer to the inquiry, who shall take the succession when a reunited parcener dies leaving no male issue, and there exists a whole brother not reunited, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate. "A half brother being again associated, may take the succession, not a half brother though not reunited: but one, united [by blood, though not by coparcenery,] may obtain the property; and not [exclusively] the son of a different mother."

8. A half brother, (meaning one born of a rival wife,) being a reunited parcener, takes the estate; but a half brother, who was not reunited, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, reunion is shown to be a reason for a half brother's succession.

9. The term "not reunited" is connected also with what follows: and hence, even one who was not again associated, may take the effects of a deceased reunited parcener. Who is he? The author replies: "one united;" that is, one united by the identity of the womb [in which he was conceived;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not reunited in coparcenery.

10. The term "united" likewise is connected with what follows: and here it signifies reunited [as a co-parcener.] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a reunited parcener, yet, being issue of a different mother he shall not exclusively take the estate of his associated co-heir.

11. Thus by the occurrence of the word "though" (*api*) in one sentence ("though not reunited," &c. § 7) and by the denial implied in the restrictive affirmation (*eva* "exclusively,") understood in the other ("one united may take the property, and not *exclusively* the son of a different mother;") it is shown, that a whole brother not reunited, and a half brother being reunited, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

12. This is made clear by *Menu*, who, after premising partition among reunited parceners ("If brethren, once divided and living again together as parceners, make a second partition;") declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any of them die, his share shall not be lost; but his uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally."

13. Among reunited brothers, if the eldest, the youngest or the middle most, at the delivery of shares, (for the indeclinable termination of the word denotes any case:) that is, at the time of making a partition, lose, or forfeit his share by his entrance into another order, (that of a hermit or ascetic, or by the guilt of sacrilege, or by any other disqualification; or if he be dead; his allotment does not lapse, but shall be set apart. The meaning is, that the reunited parceners shall not exclusively take it. The author states the appropriation of the share so reserved: "His uterine brothers and sisters, &c." (§ 12) Brothers of the whole blood, or by the same mother, though not reunited, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it: and that "equally;" not by a distribution of greater and less shares. Brothers of the half blood, who were reunited after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

#### SECTION X.

##### *On exclusion from inheritance.*

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the reunited parcener. "An impotent person, an outcast, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified,] must be maintained; excluding them, however from participation."

2. "An impotent person," one of the third gender (or neuter sex) "An outcast;" one guilty of sacrilege or other heinous crime. "His issue;" the offspring of an outcast. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong. "Blind;" destitute of the visual organ. "Afflicted with an incurable disease" affected by an irremediable distemper, such as marasmus or the like.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus *Vasishtha* says, "They, who have entered into another order are debarred from shares." *Nareda* also declares, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman." *Menu* likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb]."

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred, if they be not maintained. For *Menu* says, "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power: for he who gives it not, shall be deemed an outcast." "Without stint" signifies 'for life.'

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his coheirs, is not deprived of his allotment.

7. If the defect be removed by medicaments or other means [as penance and atonement] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution."

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects."

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Of these [two descriptions of offspring] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided with husbands."

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

14. The author adds a distinct maxim respecting the wives of disqualified persons: "Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled: and so indeed should those, who are perverse."

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste they must be expelled: and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

## AL SERAJIYYAH.

### THE INTRODUCTION.

#### IN THE NAME OF THE MOST MERCIFUL GOD !

Praise *be* to God, the Lord of *all* worlds ; the praise of those who give *Him* thanks ! And (*His*) blessing on the best of created beings, Muhammed, and his excellent family ! The Prophet of God, (on whom be His blessing and peace !) said :—" Learn the laws of inheritance, and teach them to the people ; for they *are* one half of useful knowledge." Our learned in the law (to whom God be merciful !) say :—" There belong to the property of a person deceased four successive duties (to be performed by the magistrate :) first, his funeral ceremony and burial, without superfluity of expence, yet without deficiency ; next, the discharge of his just debts from the whole of his remaining effects ; then, the payment of his legacies out of a third of what remains after his debts *are* paid ; and, lastly, the distribution of the residue among his successors, according to the Divine Book, to the Traditions, and to the assent of the Learned." They begin with the persons entitled to shares, who are such as have each a specific share allotted to them in the Book of Almighty God ; then they proceed to the residuary heirs by relation, and they are all such as take what remains of the inheritance, after those who are entitled to shares ; and, there be only residuaries, they take the whole property : next to residuaries for special cause, as the master of an enfranchised slave and his *male* residuary heirs. Then they return to those entitled to shares according to their respective rights of consanguinity ; then to the more distant kindred ; then to the successor by contract ; then to him who was acknowledged as a kinsman through another, so as not to prove his consanguinity, provided the deceased persisted in that acknowledgment even till he died ; then to the person, to whom the whole property was left by will ; and lastly to the public treasury.

#### ON IMPEDIMENTS TO SUCCESSION.

Impediments to succession *are* four ; I. Servitude, whether it be perfect or imperfect ; II. homicide, whether punishable by retaliation, or expiable ; III. difference of religion ; and IV. difference of country, either actual, as between an alien enemy and an alien tributary ; or qualified, as between a fugitive and a tributary, or between two fugitive enemies from two different states : now a state differs from another by *having* different forces and sovereigns, there *being* no community of protection between them.

#### ON THE DOCTRINE OF SHARES, AND THE PERSONS ENTITLED TO THEM.

The *furud*, (*Furus*) of shares, appointed in the book of Almighty God, *are* six : a moiety, a quarter, and eighth, two thirds, one third, and a sixth, *some formed* by doubling, and *some* by halving. Now those entitled to these shares *are* twelve persons ; four males, who *are* the father and the true grandfather or other male ancestor, how high soever *in the paternal line*, the brother by the same mother, and the husband ; and eight females, who *are* the wife, and the daughter, and the son's daughter, or other female descendant how low soever, the sister by one father and mother, the sister



by the father's side, and the sister by the mother's side, the mother, and the true grandmother, that is, she who is related to the deceased without the intervention of a false grandmother. (A false male ancestor is, where a female ancestor intervenes in the line of ascent).

The father takes in three cases; I. an absolute share, which is a sixth, and that with the son, or son's son, how low soever; II. a legal share, and a residuary portion also, and that with a daughter, or a son's daughter, how low soever in the degree of descent; III. he has a simple residuary title, on failure of children and son's children, or other low descendants. The true grandfather has the same interest with the father, except in four cases which we will mention presently, if it please God; but the grandfather is excluded by the father, *if he be living*; since the father is the mean of consanguinity between the grandfather and the deceased. The mother's children also take in three cases: a sixth is the share of one only; a third, of two, or of more: males and females have an equal division and right; but the mother's children are excluded by children of the deceased and by son's children, how low soever, as well as by the father and grandfather; as the learned agree. The husband takes in two cases; half, on failure of children, and son's children, and a fourth, with children or son's children, how low soever they descend.

#### ON WOMEN.

Wives take in two cases; a fourth (goes) to one or more on failure of children, and son's children, how low soever; and an eighth with children or son's children, in any degree of descent. Daughters begotten by the deceased take in three cases: half (goes) to one only, and two-thirds to two or more; and, if there be a son, the male has the share of two females, and he makes them residuaries. The son's daughters are like the daughters begotten by the deceased; and they may be in six cases; half (goes) to one only, and two-thirds to two or more, on failure of daughters begotten by the deceased; with a single daughter of the deceased, they have a sixth, completing (with the daughter's half) two-thirds; but, with two daughters of the deceased, they have no share of the inheritance, unless there be, in an equal degree with, or in a lower degree than, them, a boy, who makes them residuaries. As to the remainder between them, the male has the portion of two females; and all of the sons' daughters are excluded by the son himself. If a man leave three son's daughters, some of them in lower degrees than others, and three daughters, of the son of another son, some of them in lower degrees than others, and three daughters of the son's son of another son, some of them in lower degrees than others, as in the following table, this is called the case of *tashbih*.

##### FIRST SET.

Son  
|  
Son, Daughter  
|  
Son, Daughter  
|  
Son, Daughter

##### SECOND SET.

Son  
|  
Son  
|  
Son, Daughter  
|  
Son, Daughter  
|  
Son, Daughter

##### THIRD SET.

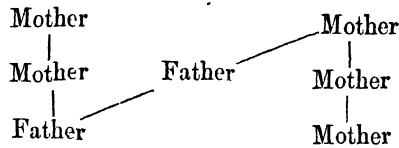
Son  
|  
Son  
|  
Son  
|  
Son, Daughter  
|  
Son, Daughter  
|  
Son, Daughter

*Here* the eldest of the first line has none equal in degree with her; the middle one of the first line is equalled in degree by the eldest of the second; and the youngest of the first line is equalled by the middle one of the second, and by the eldest of the third line; the youngest of the second line is equalled by the middle one of the third line, and the youngest of the third set has no equal in degree.—When thou hast comprehended this, then we say: the eldest of the first line has a moiety; the middle one of the first line has a sixth together with her equal in degree to make up two thirds; and those in lower degrees never take anything, unless there be a son with them, who makes them residuaries, both her who is equal to him in degree, and her who is above him; but who is not entitled to a share: those below him are excluded.

Sisters by the same father and mother may be in five cases: half (goes) to one alone; two thirds to two or more; and, if there be brothers by the same father and mother, the male has the portion of two females; and the females become residuaries through him by reason of their equality in the degree of relation to the deceased; and they take the residue, when they are with daughters or with son's daughters, by the saying of Him, on whom be blessing and peace! "Make sisters, with daughters, residuaries." Sisters by the same father only are like sisters by the same father and mother, and may in seven cases: half (goes) to one, and two thirds to two or more on failure of sisters by the same father and mother; and, with one sister by the same father and mother, they have a sixth, as the complement of two thirds; but they have no inheritance with two sisters by the same father and mother, unless there be with them a brother by the same father, who makes them residuaries; and then the residue is *distributed* among them *by the sacred rule* "to the male what is equal to the share of two females." The sixth case is, where they are residuaries with daughters or with son's daughters, as we have before stated *it*.

Brothers and sisters by the same father and mother, and by the same father only, are all excluded by the son and the son's son, in how low a degree soever, and by the father *also*, as it is agreed *among the learned*, and even by the grandfather according to *Abū Hanīfah*, on whom be the mercy of Almighty God! And those of the half blood are also excluded by the brothers of the whole blood. The mother takes in three cases; a sixth with a child, or a son's child, even in the lowest degree, or with two brothers and sisters or more, by whichever side they are related; and a third of the whole on failure of those just mentioned; and a third of the residue after the share of the husband or wife; and this in two cases, either when there are the husband and both parents, or the wife and both parents: if there be a grandfather instead of a father, then the mother takes a third of the whole property, though not by the opinion of *Abū Yusuf*, on whom be God's mercy! for he says, that in this case also she has only a third of the residue. The grandmother has a sixth, whether she be by the father or by the mother, whether alone or with more, if they be true grandmothers and equal in degree; but they are all excluded by the mother, and the paternal female ancestors also by the father; and, in like manner, by the grandfather, except the father's mother, even in the highest degree; for she takes with the grandfather, since she is *not related* through him. The nearest grandmother, or *female ancestor*, on either side, excludes the more distant grandmother, on whichever side she be; whether the nearer grandmother be entitled to a share of the inheritance, or be herself excluded. When a grandmother has but one relation, as the father's mother's mother, and

another has two such relations, or more, as the mother's mother's mother, who is also the father's father's mother, according to this table,



then a sixth is divided between them, according to *Abū Yūsuf*, in moieties respect being had to their persons ; but, according to Muhammed, (on whom be God's mercy !) in thirds, respect being had to the sides.

#### ON RESIDUARIES.

Residuaries by relation to the deceased are three : the residuaries in his own right, the residuary in another's right, and the residuary together with another. Now the residuary in his own right is every male, in whose line of relation to the deceased no female enters ; and of this sort there are four classes ; the offspring of the deceased, and his root ; and the offspring of his father and of his nearest grandfather, a preference being given, I mean a preference in the right of inheritance, according to proximity of degree. The offspring of the deceased are his sons *first* ; then their sons, in how low a degree soever : then comes his root, or his father ; then his paternal grandfather, and their paternal grandfathers, how high soever ; then the offspring of his father, or his brothers ; then their sons, how low soever ; and then the offspring of his grandfather, or his uncles : then their sons, how low soever. Then the strength of consanguinity prevails : I mean, he, who has two relations is preferable to him, who has only one relation, whether it be male or female, according to the saying of Him, (on whom be peace !) "surely, kinsmen by the same father and mother shall inherit before kinsmen by the same father only ;" thus a brother by the same father and mother, is preferred to a brother by the father only, and a sister by the same father and mother, if she become a residuary with the daughter, is preferred to a brother by the father only ; and the son of a brother by the same father and mother is preferred to the son of a brother by the same father only ; and the rule is the same in regard to the paternal uncles of the deceased ; and, after them, to the paternal uncles of his father, and, after them, to the paternal uncles of his grandfather.

The residuaries in another's right are four females ; namely, those whose shares are half and two thirds, and who become residuaries in right of their brothers, as we have before mentioned in their different cases ; but she, who has no share among females, and whose brother is the heir, doth not become a residuary in his right ; as in the case of a paternal uncle and a paternal aunt.

As to residuaries together with others : such is every female who becomes a residuary with another female ; as a sister with a daughter, as we have mentioned before.

The last residuary is the master of a freedman, and then his residuary heirs, in the order before stated : according to the saying of Him, (on whom be blessing and peace !) "the master bears a relation like that of consanguinity ;" but females have nothing among the heirs of a manumittor, according to the saying of Him, (on whom be blessing and peace !) "Women have nothing from their relation to freedmen, except when they have themselves manumitted a slave ; or their freedman has manumitted one, or they have sold a

manumission to a slave, or their vendee has sold it to his slave, or they have promised manumission after their death, or their promisee has promised it after his death, or unless their freedman or freedman's freedman draw a relation to them."

If the freedman leave the father and son of his manumittor, then a sixth of the right over the property of the freedman vests in the father, and the residue in the son, according to Abú Yusuf; but, according to the both Abú Hanifah and Muhammed, the whole right vests in the son; and, if a son and a grandfather of the manumittor be left, the whole right over the freedman goes to the son, as all the learned agree. When a man possesses as his slave a kinsman in a prohibited degree, he manumits him, and his right vests in him; as if there be three daughters, the youngest of whom has twenty *dinárs*, and the eldest, thirty; and they two buy their father for fifty *dinárs*; and afterwards their father die leaving some property; then two thirds of it are divided in thirds among them, as their legal shares, and the residue goes in fifths to the two who bought their father; three fifths to the eldest and two fifths to the youngest; which may be settled by dividing the whole into forty-five parts.

#### ON EXCLUSION.

Exclusion is of two sorts: I. *Imperfect*, or an exclusion from one share, and an admission to another; and this takes place in respect of five persons, the husband or wife, the mother, the son's daughter, and the sister by the same father; and an explanation of it has preceded. II *Perfect* exclusion; there are two sets of persons having a claim to the inheritance: one of which sets is not excluded entirely in any case; and they are six persons, the son, the father, the husband, the daughter, the mother, and the wife; but the other set inherit in one case and in another case are excluded. This is grounded on two principles; one of which is, that, "whoever is related to the deceased through any person, shall not inherit, while that person is living;" as a son's son, with the son; except the mother's children, for they inherit with her; since she has no title to the whole inheritance; the second principle is, "that the nearest of blood must take," and who the nearest is, we have explained in the chapter on residuaries. A person incapable of inheriting doth not exclude any one, at least in our opinion; but, according to Ibnu Masuud (may God be gracious to him!) he excludes imperfectly; as an infidel, a murderer, and a slave. A person excluded may, as all the learned agree, exclude others; as, if there be two brothers or sisters or more, on whichever side they are, they do not inherit with the father of the deceased, yet they drive the mother from a third to a sixth.

#### ON THE DIVISORS OF SHARES.

Know, that the six shares mentioned in the book of Almighty God are of two sorts: of the first are a moiety, a fourth, and an eighth; and of the second sort are two-thirds, a third, and a sixth, as the fractions are halved and doubled. Now, when any of these shares occur in cases singly, the divisor for each share is that number which gives it its name, (except half, which is from two) as a fourth denominated from four, an eighth from eight, and a third from three: when they occur by two or three, and are of the same sort, then each integral number is the proper divisor to produce its fraction, and also to produce the double of that fraction, and the double of that, as six produces a sixth, and likewise a third, and two-thirds; but,

when half, *which is* from the first sort, is mixed with all of the second sort or with some of them, then *the division of the estate must be* by six ; when a fourth is mixed with all of the second sort or with some of them, then the division must be into twelve ; and when an eighth is mixed with all of the second sort, or with some of them, then it must be into four and twenty parts.

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#### ON THE INCREASE.

*Aúl*, or *increase*, is, when some fraction remains above the *regular* divisor, or when the divisor is too small to admit one share. Know, that the whole number of divisors is seven, four of which have no increase, namely, two, three, four, and eight ; and three of them have an increase. The *divisor*, six is, therefore, increased by the *ául* to ten, either by odd, or by even, numbers ; twelve is raised to seventeen by odd, not by even, numbers ; and twenty-four is raised to twenty-seven by one increase only ; as in the case, called *Mimberiyya*, (or a case answered by Ali when he was in the pulpit,) which was this, " *A man left a wife, two daughters, and both his parents.*" After this there can be no increase, except according to Ibn Masúud, (may God be gracious to him !) for, in his opinion, the divisor twenty-four may be raised to thirty-one ; as if a man leave a wife, his mother, two sisters by the same parents, two sisters by the same mother only, and a son rendered incapable of inheriting.

#### ON THE EQUALITY, PROPORTION, AGREEMENT, AND DIFFERENCE OF TWO NUMBERS.

The *temáthul* (*tzmásul*) of two numbers is the equality of one to the other, the *tedákhul* is, when the smaller of two numbers exactly measures the larger, or exhausts it ; or we call it *Tedákhul*, when the larger of the two numbers is divided exactly by the smaller ; or we may define it thus, when the larger exceeds the smaller by one number or more equal to it, or equal to the larger ; or it is, when the smaller is an aliquot part of the larger, as three of nine. The *tawáfuk*, or agreement, of two numbers is, where the smaller does not exactly measure the larger, but a third number measures them both, as eight and twenty, each of which is measured by four, and they agree in a fourth ; since the number measuring them is the denominator of a fraction common to both. The *tabdyun* of two numbers is, when no third number whatever measures the two discordant numbers, as nine and ten. Now the way of knowing the agreement or disagreement between two different quantities is, that the greater be diminished by the smaller quantity on both sides, once or oftener, until they agree in one point ; and if they agree in unit only, there is no numerical agreement between them ; but, if they agree in any number, then they are (*said to be*) *mutawáfik* in a fraction, of which that number is the denominator ; if two, in half ; if three, in a third ; if four, in a quarter ; and so on, as far as ten ; and above ten, they agree in a fraction ; I mean, if the number be eleven, the fraction of eleven, and, if it be fifteen, by the fraction of fifteen. Pay attention to this *rule*.

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#### ON ARRANGEMENT.

In arranging cases there is need of seven principles ; three, between the shares and the persons, and four between persons and persons. Of the three principles the first is, that, if the portions of all the classes be

divided among them without a fraction, there is no need of multiplication, as if a man leave both parents and two daughters. The second is, that, if the portions of one class be fractional, yet there be an agreement between their portions and their persons, then the measure of the number of persons, whose shares are broken, must be multiplied by the root of the case, and its increase, if it be an increased case, as, if a man leave both parents and ten daughters, or a woman leave a husband, both parents, and six daughters. The third principle is, that, if their portions leave a fraction, and there be no agreement between those portions and the persons, then the whole number of the persons, whose shares are broken, must be multiplied into the root of the case, as if a woman leave her husband and five sisters by the same father and mother. Of the four other principles the first is, that, when there is a fractional division between two classes or more, but an equality between the numbers of the persons, then the rule is, that one of the numbers be multiplied into the root of the case; as if there be six daughters, and three grandmothers, and three paternal uncles. The second is, when some of the numbers equally measure the others; then the rule is, that the greater number be multiplied into the root of the case, as, if a man leave four wives and three grandmothers and twelve paternal uncles. The third is, when some of the numbers are *mutawáfik*, or composit, with others; then the rule is, that the measure of the first of the numbers be multiplied into the whole of the second, and the product into the measure of the third, if the product of the third be *mutawáfik*, or, if not, into the whole of the third, and then into the fourth, and so on, in the same manner; after which the product must be multiplied into the root of the case: as, if a man leave four wives, eighteen daughters, fifteen female ancestors, and six paternal uncles. The fourth principle is, when the numbers are *mutabáyan*, or not agreeing one with another; and then the rule is, that the first of the numbers be multiplied into the whole of the second, and the product multiplied by the whole of the third, and that product into the whole of the fourth, and the last product into the root of the case; as, if a man leave two wives, six female ancestors, ten daughters, and seven paternal uncles.

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#### SECTION.

When thou desirest to know the share of each class by arrangement, multiply what each class has from the root of the case by what thou hast already multiplied into the root of the case, and the product is the share of that class, and, if thou desirest to know the share of each individual in that class by arrangement, divide what each class has from the principle of the case by the number of the persons in it, then multiply the quotient into the multiplicand, and the product *will be* the share of each individual in that class. Another method is, to divide the multiplied number by whichever class thou thinkest proper, then to multiply the quotient into the share of that set, by which thou hast divided the multiplied number, and the product *will be* the share of each individual in that set. Another method is by the way of proportion, which is the clearest; and it is, that a proportion be ascertained for the share of each class from the root of the case to the number of persons one by one, and that, according to such proportion from the multiplied number, a share be given to each individual of that class.

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ON THE DIVISION OF THE PROPERTY LEFT AMONG HEIRS AND AMONG  
CREDITORS.

If there be a disagreement between the property left and the number arising from the arrangement, then multiply the portion of each heir, according to that arrangement, into the aggregate of the property, and divide the product by the number of the arrangement; but, when there is an agreement between the arrangement and the property left, then multiply the portion of each heir, according to the arrangement, into the measure of the property, and divide the product by the measure of the *number* arising from the arrangement: the quotient is the portion of that heir in both methods. This rule is in order to know the portion of each individual among the heirs; but, in order to know the portion of each class of them, multiply what each class has, according to the root of the case, into the measure of the property left, then divide the product by the measure of the case, if there be an agreement between the property left and the case; but, if there be a disagreement between them, then multiply into the whole of the property left, and divide the product by the whole *number arising from the verification of the case*; and the quotient will be the portion of that class in both methods. Now, as to the payment of debts, the debts of all the creditors stand in the place of the arranging number.

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ON SUBTRACTION.

When any one agrees to take a part of the property left, subtract his share from *the number arising by the proof*, and divide the remainder of the property by the portions of those who remain; as, if a woman leave her husband, her mother, and a paternal uncle: Now *suppose that* the husband agrees to take what was in his power of his bridal gift to the wife; this is deducted from among the *heirs*: then what remains is divided between the mother and the uncle in thirds, according to their legal shares; and thus there will be two parts for the mother, and one for the uncle.

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ON THE RETURN.

The return is the converse of the increase; and it *takes place* in what remains above the shares of those entitled to them, when there is no legal claimant of it: this *surplus* is returned to the sharers according to their rights, except the husband or the wife; and this is the opinion of all the *Prophet's* companions, as *Ali* and his followers, may God be gracious to them! And our masters (to whom God be merciful!) have assented to it: *Zaed*, the son of *Thabit* (*Sabit*) says, that the surplus doth not revert, but *goes* to the public treasury; and to this opinion have assented *Urwah* and *Alzuhri* and *Málic* and *Alsháfí*, may God be merciful to them!

Now the cases on this head are *in* four divisions: the first of them *is*, when there is in the case but one sort of kinsmen, to whom a return must be made, and none of those who are not entitled to a return: then settle the case according to the number of persons; as, when the deceased has left two daughters, or two sisters, or two female aucestors; settle it, therefore, by two. The second *is*, when there are joined in the case two or three sorts of those, to whom a return must be made, without any of those, to whom there is no return: then settle the case according to their shares; I mean by two, if there be two sixths in the case; or by three, when there are a third and a sixth in it; or by four, when there

are a moiety and a sixth in it; or by five, when there are in it two-thirds and a sixth, or half and two-sixths, or half and a third. The third *is*, when in the first case, there is *any one* to whom no return can be made: then give the share of him or her, to whom there is no return, according to the *lowest denominator*, and if the residue exactly quadrate with the number of persons, who are entitled to a return, *it is well*; as *if there be a husband and three daughters*; but, if they do not agree, then multiply the measure of the number of the persons, if there be an agreement between the number of persons and the residue, into the denominator of the shares of those, to whom no return is to be made: as *if there be a husband, and six daughters*; if not, multiply the whole number of the persons into the denominator of the share of those, to whom there is no return; and the product will set the case right. The fourth is, when, in the second case, there are any to whom no return is made: then divide what remains from the denominator of the share of him or them, who have no return, by the case of those, to whom a return must be made, and, if the remainder quadrate, *it is well*; and this *is* in one form; that is, when a fourth *goes* to the wives, and the residue is *distributed* in thirds among those entitled to a return; as *if there be a wife, and a grand-mother, and two sisters by the mother's side*: but, if it do not quadrate, then multiply the whole case of those, who are entitled to a return, into the denominator of the share of him or her, who is not entitled to it, and the product will be the denominator of the shares of the both classes; as *if there be four wives, and nine daughters, and six female ancestors*: then multiply the shares of those, to whom no return, must be made, into the case of those, who are entitled to a return, and the shares of those, to whom a return is to be made, into what remains of the denominator of the share of those, who are not entitled to a return. If there be a fraction in some, adjust the case by the before-mentioned principles.

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#### ON THE DIVISION OF THE PATERNAL GRANDFATHER.

Abubeer the Just, (on whom be the grace of God!) and those who followed him, among the companions of the Prophet, say, "the brethren of the whole blood and the brethren by the father's side inherit not with the grandfather." This is also the decision of *Abû Hanfâ*, (on whom be God's mercy!) and judgments are given conformably to it. *Zaed* the son of *Thabit*, indeed, asserts, that they *do* inherit with the grandfather; and of this opinion are both *Abû Yusuf* and *Muhammed*, as well as *Mâlic* and *Alshafi*. According to *Zaed*, the son of *Thabit* (on whom be God's mercy!) the grandfather, with brothers or sisters of the whole blood and by the father's side, takes the best in two cases, from the *mukâsamah*, or *division*, and from a third of the whole estate. The meaning of *mukâsamah* is, that the grandfather is placed in the division as one of the brethren, and the brethren of the half blood enter into the division with those of the whole blood, to the prejudice of the grandfather; but, when the grandfather has received his allotment, then the half blood are removed from the rest, as *if* disinherited, and receive nothing; and the residue goes to the brethren of the whole blood; except when, among those of the whole blood, there is a single sister, who receives her legal share, I mean the whole after the grandfather's allotment: then, if anything remains, *it goes* to the half blood; if not, they have nothing: and this *is the case*, when a man leaves a grandfather, a sister by the same father and mother, and two sisters by the same father only: *in this case*



there remains to those sisters a tenth of the estate, and the correct denominator *is* twenty; but, if there be, in the preceding case, one sister by the same father only, nothing remains for her; and if one, entitled to a legal share, be mixed with them, then, after he has received his share, the grandfather has the best in the three arrangements; either the division, when *a woman leaves* her husband, a grandfather, and a brother; or a third of the residue *is given*, when a man leaves a grandfather, a grandmother, and two brothers, and a sister by the same father and mother. Or a sixth of the whole estate *is given*, when a man leaves a grandfather and a grandmother, a daughter, and two brothers; and, when a third of the residue is better from the grandfather, and the residue has not a complete third, multiply the denominator of the third into the root of the case. If a woman leave a grandfather, her husband, a daughter, her mother, and a sister by the same father and mother, or by the same father only, then a sixth is best for the grandfather, and the *root of the case* is raised to thirteen, and the sister has nothing. Know, that Zaed, the son of Thabit (on whom be God's grace!) has not placed the sister by the same father and mother, or by the same father, as entitled to a share with the grandfather, except in the case, named *acdariyyah*, and that is, the husband, the mother, a grandfather, and a sister by the same father and mother, or by the same father only; *in which case* the husband *ought to have* a moiety; the mother, a third; the grandfather, a sixth; and the sister, a moiety; then the grandfather annexes his share to that of the sister, and a division is made between them *by the rule* "a male has the portion of two females;" *and this is*, because the division is best for the grandfather. The root is *regularly* six, but is increased to nine; and a correct distribution is made by twenty-seven. The case is called *acdariyyah*, because it occurred on *the death of* a woman belonging to the tribe of Acdar. If, instead of the sister, there be a brother or two sisters, there is no increase, nor *is that case* an *acdariyyah*.

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#### ON SUCCESSION TO VESTED INTERESTS.

If some of the shares become vested inheritances before the distribution, as *if a woman leave* her husband, a daughter, and her mother, and the husband die, before the estate can be distributed, leaving a wife and both his parents, *if* then the daughter die leaving two sons, a daughter, and a *maternal* grandmother, and then the grandmother die leaving her husband and two brothers, the principle in this *event* is, that the case of the first deceased be arranged, and that the allotment of each heir be *considered* as delivered according to that arrangement; that, next, the case of the second deceased be arranged, and that a comparison be made between what was in his hands, of *vested interest*, from the first arrangement, and between the second arrangement, in three situations; and if, on account of equality, what *is* in his hands from the first arrangement quadruple with the second arrangement, then there is no need of multiplication; but, if it be not right, then see whether there be an agreement between the two, and multiply the measure of the second arrangement into the whole of the first arrangement; and, if there be a disagreement between them, then multiply the whole of the second arrangement into the whole of the first arrangement, and the product *will be* the denominator of both cases. The allotments of the heirs of the first deceased must be multiplied into the former multiplicand, I mean into the second arrangement or into its measure; and the allotments of the heirs of the second deceased must be multiplied into the whole of

what *was* in his hands, or into its measure ; and, if a third or a fourth die, put the second product in the place of the first arrangement, and the third case in the place of the second, in working ; *and* thus in *the case of* a fourth and a fifth, and so on to infinity.

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#### ON DISTANT KINDRED.

A distant kinsman *is* every relation, who is neither a sharer nor a residuary. The generality of the *Prophet's* companions repeat a tradition concerning the inheritance of distant kinsmen ; and, according to this, our masters and their followers (may God be merciful to them !) have decided ; but Zaed, the son of Thabit, (on whom be God's grace !) says : “ there is no inheritance for the distant kindred, but the property *undisposed of* is placed in the public treasury ” ; and with him agree Málic and Alshafi, on whom be God's mercy ! Now these distant kindred *are* of four classes : the first class is descended from the deceased ; and they are the daughters' children, and the children of the sons' daughters. The second sort *are* they from whom the deceased descend ; and they are the excluded grandfathers and the excluded grandmothers. The third sort are descended from the parents of the deceased ; and they *are* the sisters' children, and the brothers' daughters, and the sons of brothers by the same mother only. The fourth sort are descended from the two grandfathers and two grandmothers of the deceased ; and they are, paternal aunts, and uncles by the same mother *only*, and maternal uncles and aunts. These, and all who are related to the deceased through them, are among the distant kindred. Abú Sulaimán reports from Muhammed, the son of Alhasan, *who reported* from Abú Hanifah (on whom be God's mercy !) that the second sort are the nearest of the *four* sorts, how high soever they ascend ; then the first, how low soever they descend ; then the third, how low soever ; and lastly, the fourth, how distant soever *their degree* : but Abú Yusuf and Alhasan, the son of Ziyad, report from Abú Hanifah, (on whom be the mercy of God !) that the nearest of the *four* sorts is the first, then the second, then the third, then the fourth, like the order of the residuaries ; and this *is* taken as a rule for decision. According to both *Abú Yusuf* and *Muhammed*, the third sort has a preference over the maternal grandfather.

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#### ON THE FIRST CLASS.

The best entitled of them to the succession is the nearest of them in degree to the deceased ; as the daughter's daughter, who is preferred to the daughter of the son's daughter ; and, *if the claimants* are equal in degree, then the child of an heir is preferred to the child of a distant relation ; as the daughter of a son's daughter is preferred to the son of a daughter's daughter ; but, if their degrees be equal, and there be not among them the child of an heir, or, if all of them be the children of heirs, then, according to Abú Yusuf (may God be merciful to him !) and Alhasan, son of Ziyad, the persons of the branches are considered, and the property is distributed among them equally, whether the condition of the roots, as male or female, agree or disagree ; but Muhammed (on whom be God's mercy !) considers the persons of the branches, if the sex of the roots agree, *in which respect* he concurs with the other two ; and he considers the persons of the roots, if their sexes be different, and, he gives to the branches the inheritance of the roots, in opposition to the two *lawyers*. For instance. when a *man*

leaves a daughter's son, and a daughter's daughter, *then*, according to Abú Yusuf and Alhasan, the property is distributed between them, *by the rule* "the male has the portion of two females", their persons being considered; and, according to Muhammed, in the same manner; because the sexes of the roots agree: and, if a *man* leave the daughter of a daughter's son, and the son of a daughter's daughter, *then*, according to the two *first mentioned lawyers*, the property is *divided* in thirds between the branches, by considering the persons, two-thirds of it *being given* to the male, and one-third to the female; but, according to Muhammed, (on whom be God's mercy!) the property is *divided* between the roots, I mean *those* in the second rank, in thirds, two-thirds *going* to the daughter of the daughter's son, *namely*, the allotment of her father, and one-third of it to the son of the daughter's daughter, *namely*, the share of his mother. Thus, according to Muhammed, (to whom God be merciful!) when the children of the daughters are different *in sex*, the property is divided according to the first rank *that* differs among the roots; then the males are arranged in one class, and the females in another class, after the division, and what goes to the males is collected and distributed according to the highest difference, that occurs among their children; and, in the same manner, what goes to the females; and thus the operation is continued to the end according to this scheme:

S	S	S	D	D	D	D	D	D	D	D	D	D
D	D	D	D	D	D	D	D	D	D	D	D	D
S	D	D	S	S	S	D	D	D	D	D	D	D
D	D	D	S	D	D	S	S	S	D	D	D	D
D	S	D	D	D	D	S	D	D	S	D	D	D
D	D	D	D	D	S	D	D	S	D	S	D	D

Thus Muhammed (to whom God be merciful!) takes the sex from the root at the time of the distribution, and the number from the branches; as, if a *man* leave two sons of a daughter's daughter's daughter, and a daughter of a daughter's daughter's son, and two daughters of a daughter's son's daughter, in this form:

THE DECEASED.—

Daughter	Daughter	Daughter
Son	Daughter	Daughter
Daughter	Son	Daughter
Two Daughters	Daughter	Two Sons.

*In this case* according to Abú Yusuf (on whom be God's mercy!) the property is divided among the branches in seven parts, by considering their persons; but, according to Muhammed, (to whom God be merciful!) the property is distributed according to the highest difference *of sex*, I mean in the second rank, in sevenths, by the number of branches in the roots; and, according to him, four sevenths of it *go* to the daughters of the daughter's son's daughter; since that is the share of their grandfather, and three sevenths of it, which are the allotment of the two daughters, are divided between their two children, I mean those in the third rank, in *moieties*; one moiety to the daughter of the daughter's daughter's son, *which* is the

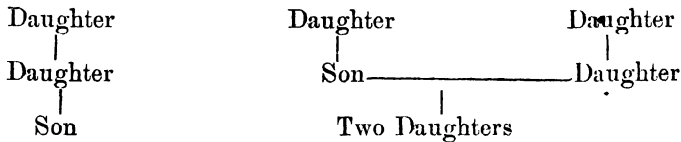
share of her father, and the other moiety to the two sons of the daughter's daughter's daughter, being the share of their mother : the correct divisor of the property is, in this case, twenty-eight. The opinion of Muhammed (on whom be God's mercy !) is the more generally received of the two traditions from Abú Hanífah (to whom God be merciful !) in all decisions concerning the distant kindred ; and this was the first opinion of Abú Yusuf ; then he departed from it, and said that the roots were by no means to be considered.

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A SECTION.

Our learned lawyers (on whom be the mercy of God !) consider the *different* sides in succession ; except that Abu Yusuf (may God be merciful to him !) considers the sides in the persons of the branches, and Muhammad, (on whom be God's mercy !) considers the sides in the roots ; as, when a man leaves two daughters of a daughter's daughter, who are also the two daughters of a daughter's son, and the son of a daughter's daughter, according to this scheme ;

THE DECEASED.



*In this case,* according to Abu Yusuf, the property is divided among them in thirds, and then the deceased is considered as if he had left four daughters and a son ; two-thirds of it, therefore, go to the two daughters, and one-third to the son ; but, according to Muhammed (to whom God be merciful !) the estate is divided among them in twenty-eight parts, to the two daughters twenty-two shares (sixteen in right of their father and six shares in right of their mother) and to the son six shares in right of his mother.

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ON THE SECOND CLASS.

He among them, who is preferred in the succession, is the nearest of them to the deceased, on which side soever he stands ; and, in the case of equality in the degrees of proximity, then he, who is related to the deceased through an heir, is preferred by the opinion of Abu Suhail, surnamed Alferaidi, of Abu Fudail Alkhassaf, and of Ali, the son of Isai Albasri ; but, no preference is given to him according to Abu Sulaiman Aljurjani, and Abu Ali Albaihathi Albusti. If their degrees be equal, and there be none among them, who is related through an heir, or, if all of them be related through an heir, then, if the sex of those, through whom they are related, agree, and their relation be on the same side, the distribution is according to their persons ; but if the sex of those, to whom they are related, be different, the property is distributed according to the first rank that differs in sex, as in the first class ; and, if their relation differ, then two-thirds go to those on the father's side, that being the share of the father, and one-third goes to those on the mother's side, that being the share of the mother : then what has been allotted to each set is distributed among them, as if their relation were the same.

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## ON THE THIRD CLASS.

The rule concerning them is the same with that concerning the first class ; I mean, *that he is preferred in the succession, who is nearest to the deceased* : and, if they be equal in relation, then the child of a residuary is preferred to the child of a more distant kinsman ; as, *if a man leave the daughter of a brother's son, and the son of a sister's daughter, both of them by the same father and mother, or by the same father, or one of them by the same father and mother, and the other by the same father only : in this case the whole estate goes to the daughter of the brother's son, because she is the child of a residuary ; and, if it be by the same mother only, distribution is made between them by the rule, "A male has the share of two females," and, by the opinion of Abú Yusuf (to whom God be merciful ! ) in thirds, according to the persons, but, by that of Muhammed, (may God be merciful to him ! ) in moieties according to the roots ; and if they be equal in proximity, and there be no child of a residuary among them, or if all of them be children of residuaries, or if some of them be children of residuaries, and some of them children of those entitled to shares, and their relation differ, then Abú Yusuf (to whom God be merciful ! ) considers the strongest in consanguinity ; but Muhammed (may God be merciful to him ! ) divides the property among the brothers and sisters in moieties, considering as well number of the branches, as the sides in the roots : and what has been allotted to each set is distributed among their branches, as in the first class : thus, if a man leave the daughter of the daughter of a sister by the same father and mother, she is preferred to the son of the daughter of a brother by the same father only, according to Abú Yusuf (to whom God be merciful ! ) by reason of the strength of relation ; but, according to Muhammed, (may God be merciful to him) the property is divided between them both in moieties by consideration of the roots. So, when a man leaves three daughters of different brothers, and three sons and three daughters of different sisters, as in this figure ;*

## THE DECEASED.

Sister—Sister—Sister—Brother—Brother—Brother

by the same

Mother—Father—Father—Mother—Father—Father  
                                 and Mother                                and Mother

Son   Son   Son   Daughter   Daughter   Daughter  
                     Daughter   Daughter   Daughter.

*In this case, according to Abú Yusuf, the property is divided among the branches of the whole blood, then among the branches by the same father, then among the branches by the same mother, according to the rule "the male has the allotment of two females," in fourths, by considering the persons ; but, according to Muhammed (to whom God be merciful ! ) a third of the estate is divided equally among the branches by the same mother, in thirds, by considering the equality of their roots in the division of the parents, and the remainder among the branches of the whole blood in moieties, by considering in the roots the number of the branches ; one half to the daughter of the brother, the portion of the father, and the other between the children of the sister, the male having the allotment of two*

females, by considering the persons; and *the estate* is correctly divided by nine. If a man leave three daughters of different brother's sons, in this manner:

The Deceased.

Daughter—Daughter—Daughter

of a Son of a Brother by the same

Father and Mother—Father—Mother

all the property goes to the daughter of the son of the brother by the same father and mother, by the unanimous opinion of *the learned*, since she is the child of a residuary, and hath also the strength of consanguinity.

#### ON THE FOURTH CLASS.

The rule as to them *is*, that, when there is only one of them, he has a right to the whole property, since there is none to obstruct him; and, when there are several, and the sides of their relation are the same, as paternal aunts and paternal uncles by the same mother *with the father*, or maternal uncles and aunts, then the stronger of them in consanguinity is preferred, by the general assent; I mean, they, who are *related* by father and mother, are preferred to those, who are *related* by the father *only*, and they, who are *related* by the father, are preferred to those who are *related* by the mother only, whether they be males or females; and, if there be males and females and their relation be equal, then the male has the allotment of two females; as, *if there be* a paternal uncle and aunt both by *one* mother, or a maternal uncle and aunt, both by the same father and mother, or by the same father, or by the same mother only: and if the sides of their consanguinity be different, then no regard *is shown* to the strength of relation; as, *if there be* a paternal aunt by the same father and mother, and a maternal aunt by the same mother, or a maternal aunt by the same father and mother, and a paternal aunt by the same mother only, then two-thirds *go* to the kindred of the father, for they *are* the father's allotment, and one-third to the kindred of the mother, for that *is* the mother's allotment; then what is allotted to each set is divided among them, as if the place of their consanguinity were the same.

#### ON THEIR CHILDREN, AND THE RULES CONCERNING THEM.

The rule as to them *is* like the rule concerning the first class; I mean, *that* the best entitled of them to the succession is the nearest of them to the deceased on which ever side he is *related*; and, if they be equal in relation, and the place of their consanguinity be the same, then he, who has the strength of blood, is preferred, by the general assent; and, if they be equal in degree and in blood, and the place of their consanguinity be the same, then the child of a residuary *is* preferred to whoever is not *such*; as, *if a man* leave the daughter of a paternal uncle, and the son of a paternal aunt; both of them by *the same* father and mother, or by *the same* father, all the property goes to the daughter of the paternal uncle; and, if one of them be by *the same* father and mother, and the other by the same father only, *then* all the estate goes to the claimant, who has the strength of consanguinity, according to the clearer tradition; and *this* by analogy to the maternal aunt by the same father, for though she be the child of a distant kinsman,

yet she is preferred, by the strength of consanguinity, to the maternal aunt by the *same* mother *only*, though she be the child of an heir ; since the weight which prevails by itself, that is, the strength of consanguinity, is greater than the weight by another, which is the descent from an heir. Some of them (the learned) say, *that* the whole estate goes to the daughter of the paternal uncle by the same father, since she is the daughter of a residuary ; and, if they be equal in degree, yet the place of their relation differ, they have no regard *shown* to the strength of consanguinity, nor to the descent from a residuary, according to the clearer tradition ; by analogy to the paternal aunt by the same father and mother, for though she have two bloods, and be the child of an heir on both sides, and her mother be entitled to a legal share, *yet* she is not preferred to the maternal aunt by the *same* father ; but two-thirds *go* to whoever is related by the father ; and there regard is shown to the strength of blood ; then to the descent from a residuary ; and one-third *goes* to whoever is related by the mother, and there *too* regard is shewn to strength of consanguinity : then, according to Abú Yusuf, (may God be merciful to him !) what belongs to each set is divided among the persons of their branches, with attention to the number of sides in the branches ; and, according to Muhammed, (may God be merciful to him !) the property is distributed by the first line, *that* differs, with attention to the number of the branches and of the sides in the roots, as in the first class ; then this rule is applied to the sides of the paternal uncles of his parents and their maternal uncles ; then to their children ; then to the side of the paternal uncles of the parents of his parents, and to their maternal uncles ; then to their children, as in the *case* of residuaries.

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#### ON HERMAPHRODITES.

To the hermaphrodite, *whose sex is quite* doubtful, *is allotted* the smaller of two shares, I mean the worse of two conditions, according to Abú Hanífah, (may God be merciful to him !) and his friends ; and this is the doctrine of the generality of the *Prophet's* companions, (may God be gracious to them !) and conformable to its decisions *given* ; as, when a *man* leaves a son, and a daughter, and an hermaphrodite, then the hermaphrodite has the share of a daughter, since that is ascertained : and according to Aámir Alshábi, (and this is the opinion of Ibnu Abbás, may God be gracious to them both !) the hermaphrodite has a moiety of the two shares in the controversy ; but *the two great lawyers* differ in putting in practice the doctrine of Alshábi ; for Abú Yusuf says, *that* the son has one share, and the daughter half a share, and the hermaphrodite three-fourths of a share, since the hermaphrodite would be entitled to a share, if he were a male, and to half a share, if he were a female, and this is settled by *his* taking half the sum of the two portions ; or, we may say, he takes the moiety which is ascertained, together with half the moiety which is disputed, so that there come to him three-fourths of a share ; for he (Abú Yusuf) *pays* attention to the legal share and to the increase, and he verifies *the case* by nine : or, we may say, the son has two shares, and the daughter one share, and the hermaphrodite a moiety of the two allotments, and that is a share and half a share. But Muhammed (may God be merciful to him !) says, that the hermaphrodite would take two-fifths of the estate, if he were a male, and a fourth of the estate, if he were a female, and that he takes a moiety of the two allotments, and that *will give him* one-fifth and an eighth by attention to both sexes ; and the case is rectified by forty ; since that is the product of one of the *numbers in the* to cases, which is four

multiplied into the other, which is five, and that product multiplied by two (*which is the number of the*) cases ; and then he, who takes anything by five, *has it* multiplied into four, and he, who takes anything by four, *has it* multiplied into five ; so that thirteen shares go to the hermaphrodite, and eighteen to the son, and nine to the daughter.

## ON PREGNANCY.

The longest time of pregnancy is two years, according to Abú Hanífah (may God be merciful to him!) and his companions ; and according to Laith, the son of Sad Alfahmí, (may God be merciful to him!) three years ; and, according to Alsháfí, (may God be merciful to him!) four years : but according to Alzuhrí, (may God be merciful to him!) seven years : and the shortest time for it is six months. There is reserved for the child in the womb, according to Abú Hanífah (may God be merciful to him!) the portion of four sons, or the portion of four daughters, whichever of the two is most ; and there is given to the rest of the heirs the smallest of the portions ; but, according to Muhammed (may God be merciful to him!) there is reserved the portion of three sons or of three daughters, whichever of the two is most : Laith, son of Sâd, (may God be gracious to him!) reports this *opinion* from him ; but, by another report, *there is reserved* the portion of two sons ; and one of the two opinions is that of Abú Yusuf (may God be merciful to him!) as Hishám report it from him ; but Alkhassáf reports from Abú Yusuf (may God be merciful to him!) that there should be reserved the share of one son or of one daughter ; and, according to this, decisions *are made* ; and security must be taken, according to his opinion. And, if the pregnancy was by the deceased, and the widow produce a child at the full *time* of the longest period *allowed* for pregnancy, or within it, and the woman hath not confessed her having broken her legal term of *abstinence*, that child shall inherit, and others may inherit from him ; but, *if* she produce a child after the longest *time* of gestation, he shall not inherit, nor shall others inherit from him : and if the pregnancy was from another man than the deceased, and she, the *kinswoman*, produce a child in six months or less, he shall inherit ; but, if she produce the child after the least period of gestation, he shall not inherit.

Now the way of knowing the life of the child at the time of its birth, is, that there be found in him that, by which life is proved ; as a voice, or sneezing, or weeping, or smiling, or moving a limb ; and, if the smallest *part* of the child come out, and he then die, he shall not inherit ; but if the greater *part* of him come out, and then he die, he shall inherit : and, if he come out straight (*or with his head first*) then his breast is considered ; I mean, if his whole breast come out, he shall inherit ; but *if* he come out inverted (*or with his feet first*) then his navel is considered.

The chief rule in arranging cases on pregnancy is, that the case be arranged by two suppositions, I mean by supposing, that the child in the womb is a male, and by supposing, that it is a female : then, compare the arrangement of both cases ; and, if the numbers agree, multiply the measure of one of the two into the whole of the other ; and, if they disagree, then multiply the whole of one of the two into the whole of the other, and the product will be the arranger of the case : then multiply the allotment of him, who would have something from the case, which supposes a male, into that of the case, which supposes a female, or into its measure ; and then that of him, who takes on the supposition of a female, into the case of the



male, or into its measure, as we have directed concerning the hermaphrodites; then examine the two products of that multiplication, and whether of the two is the less, that shall be given to such an heir; and the difference between them must be reserved from the allotment of that heir, and, when the child appears, if he be entitled to the whole of what has been reserved, it is well, but, if he be entitled to a part, let him take that part, and let the remainder be distributed among the *other* heirs, and let there be given to each of those heirs what was reserved from his allotment: as, when a man has left a daughter and both his parents, and a wife pregnant, then the case is *rectified* by twenty-four on the supposition, that the child in the womb is a male, and by twenty-seven on the supposition, that it is a female: now between the two numbers of the arrangement there is an agreement in a third, and, when the measure of one of the two is multiplied into the whole of the other, the product amounts to two hundred and sixteen, and by that *number* is the case verified; and, on the supposition of its male sex, the wife takes twenty-seven shares, and each of the two parents, thirty-six; but, on the supposition of its female sex, the wife has twenty-four, and each of the parents, thirty-two; and twenty-four are given to the wife, and three shares from her allotment are reserved: and from the allotment of each of the parents are reserved four shares; and thirteen shares are given to the daughter; since the *part* reserved in her right is the allotment of four sons, according to Abú Hanifah, (may God be merciful to him!) and when the sons are four, then her allotment is one share and four ninths of a share out of four-and-twenty multiplied into nine, and that makes thirteen shares, and this *belongs* to her, and the residue is reserved, which *amounts* to an hundred and fifteen shares. If the widow bring forth one daughter or more, then all the *part* reserved *goes* to the daughters; and, if she bring forth one son or more, then must be given to the widow and both parents what was reserved from their shares; and what remains must be divided among the children: and, if she bring forth a dead child, then must be given to the widow and both parents what was reserved from their shares, and to the daughter a complete moiety, that is, ninety-five shares more, and the remainder, which is nine shares, to the father, since he is the residuary.

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#### ON A LOST PERSON.

A lost person is *considered* as living in regard to his estate; so that no one can inherit from him; and his estate is reserved, until his death can be ascertained; or the term for a *presumption* of it has passed over. Now the traditionary opinions differ concerning that term; for, by the clearer tradition, "when not one of his equals in age remains, judgment may be given of his death;" but Hasan, the son of Ziyad, reports from Abú Hanifah (may God be merciful to him!) that the term is an hundred and twenty years from the day on which he was born, and Mahammed says, an hundred and ten years; and Abú Yusu' says, an hundred and five years: and some of them, the *learned*, say, ninety years; and according to that *opinion* are decisions made. Some of the *learned in the law* say, that the estate of a lost person must be reserved for the final regulation of the *Imám*, and the judgment suspended as to the right of another person, so that his share from the estate of his ancestors must be kept, as in the case of pregnancy; and, when the term is elapsed, and judgment given of his death, then his estate *goes* to his heirs, *who* are to be found, according to the judgment on

his decease ; and, what was reserved on his account from the estate of his ancestor, is restored to the heir of his ancestor, from whose estate that share was reserved ; since the lost person *is* dead as to the estate of another.

The principle in arranging cases concerning a lost person *is*, that the case be arranged on a supposition of his life, and then arranged on a supposition of his death ; and the rest of the operation *is* what we have mentioned in the chapter of pregnancy.

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#### ON AN APOSTATE.

When an apostate *from the faith* has died naturally, or been killed, or passed into a hostile country, and the *Kādī* has given judgment on his passage *thither*, then what he had acquired at the time of his being a believer, goes to his heirs, *who are* believers ; and what he has gained since the time of the apostacy is placed in the public treasury, according to Abú Hanífah (may God be merciful to him !) but, according to the two *lawyers*, (Abú Yúsuf and Muhammed,) both the acquisitions go to his believing heirs ; and, according to Alsháfi, (may God be merciful to him !) both the acquisitions are placed in the public treasury ; and what he gained after his arrival in the hostile country, that *is* confiscated by the general consent : and all the property of a female apostate goes to her heirs, *who are* believers, without diversity of opinion among our masters, to whom God be merciful ! but an apostate shall not inherit from any one, neither from a believer nor from an apostate like himself, and so a female apostate shall not inherit from any one ; except when the people of a whole district become apostates altogether, for then they inherit reciprocally.

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#### ON A CAPTIVE.

The rule concerning a captive *is* like the rule of other believers in regard to inheritance, as long as he has not departed from the faith ; but, if he has departed from the faith, then the rule concerning him *is* the rule concerning an apostate ; but, if his apostacy be not known, nor his life nor his death, then the rule concerning him *is* the rule concerning a lost person.

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#### ON PERSONS DROWNED, OR BURNED, OR OVERWHELMED IN RUINS.

When a company of persons die, and it is not known which of them died first, they are considered, as if they had died at the same moment, and the estate of each of them goes to his heirs, *who are* living ; and some of the deceased shall not inherit from others : this is the approved *opinion*. But Ali, and Ibnú Masúúd say, according to one of the traditions from them, that some of them shall inherit from others, except in what each of them has inherited from the companion of his fate.



E X T R A C T S  
FROM  
**MACNAGHTEN'S PRINCIPLES**  
OF  
**MAHOMEDAN LAW**

PRESCRIBED FOR THE  
**B. L. EXAMINATION OF THE CALCUTTA UNIVERSITY.**

**CHAPTER II.**

**OF INHERITANCE ACCORDING TO THE IMAMIYA OR SHIA DOCTRINE.**

Three sources of the right of inheritance.

Enumeration of them.

1. According to the tenets of this Sect, the right of inheritance proceeds from three different sources.

2. First, it accrues by virtue of consanguinity. Secondly, by virtue of marriage. Thirdly, by virtue of Willa.

3. There are three degrees of heirs who succeed by virtue of consanguinity, and so long as there is any of the first degree, even though a female, none of the second degree can inherit; and so long as there is any one of the second degree, none of the third can inherit.

Heirs by consanguinity consist of three degrees.

4. The first degree comprises the parents, and the children, and grandchildren, how low in descent soever, the nearer of whom exclude the more distant. Both parents, or one of them inherit together with a child, a grandchild, or a great grandchild; but grandchild does not inherit together with a child, nor a great-grandchild with a grandchild.

Enumeration of heirs of the first degree.

Their relative rights.

5. This degree is divided into two classes; the roots which are limited and the branches which are unlimited. The former are the parents who are not represented by their children; the latter are the children who are represented by their children. An individual of one class does not exclude an individual of the other, though his relation to the deceased be more proximate; but the individuals of either class exclude each other in proportion to their proximity.

Sub-division of.

6. No claimant has a title to inherit with children, but the parents, or the husband and wife.

Of the sons' and daughters' offspring.

7. The children of sons take the portions of sons, and the children of daughters take the portions of daughters, however low in descent.

8. The second degree comprises the grandfather, and grandmother, and other ancestors, and brothers, and sisters, and their descendants, however low in descent, the nearer of whom exclude, the more distant. The great-grandfather cannot inherit together with a grandfather or a grandmother; and the son of a brother cannot inherit with a brother or a sister, and the grandson of a brother cannot inherit with the son of a brother, or with the son of a sister.

Of the second degree.

Their relative rights.

9. This degree again is divided into two classes; the grand-parents

Sub-division of.

and other ancestors, and the brethren and their descendants. Both these classes are unlimited, and

their representatives in the ascending and descending line may be extended *ad infinitum*. An individual of one class does not exclude an individual of the other, though the relation to the deceased be more proximate; but the individuals of either class exclude each other in proportion to their proximity.

10. The third degree comprises the paternal and maternal uncles and

Of the third degree.

aunts and their descendants, the nearer of whom exclude the more distant. The son of a paternal

uncle cannot inherit with a paternal uncle or a paternal aunt, nor the son of a maternal uncle with a maternal uncle or a maternal aunt.

Their relative rights.

11. This degree is unlimited in the ascending and descending line,

Additional rules.

and their representatives may be extended *ad infinitum*; but so long as there is a single aunt or

uncle of the whole blood, the descendants of such persons cannot inherit. Uncles and aunts all share together; except some be of the half and others of the whole blood. A paternal uncle by the same father only is excluded by a paternal uncle by the same father and mother; and the son of a paternal uncle by the whole blood excludes a paternal uncle of the half blood.

12. In default of all the heirs above enumerated, the paternal and

Enumeration, of other heirs of the third degree.

maternal uncles and aunts of the father and mother succeed, and in their default their descendants, to the remotest generation, according to their degree

of proximity to the deceased. In default of all those heirs, the paternal and maternal uncles and aunts of the grand-parents and great-grand-parents inherit according to their degree of proximity to the deceased.

13. It is a general rule that the individuals of the whole blood exclude

General rule relative to the half and whole blood.

Exception.

those of the half blood who are of the same rank; but this rule does not apply to individuals of different ranks. For instance, a brother or sister of the

Whole blood excludes a brother or sister of the half blood: a son of the brother of the whole blood, however, does not exclude a brother of the half blood, because they

Example.

belong to different ranks: but he would exclude a son of the half brother who is of the same rank; so also an uncle of the whole blood does not exclude a brother of the half blood, though he does an uncle of the half blood.

14. The principle of the whole blood, excluding the half blood, is

Additional rules.

father was of the whole

confined also to the same rank, among collaterals: for instance, generally a nephew or niece whose blood, does not exclude his or her uncle or aunt of the half blood except in the case of there being a son of a paternal uncle of the whole blood, and a

Exception.

paternal uncle of the half blood by the same father only, the latter of whom is excluded by the former.

15. This principle of exclusion does not extend to uncles and aunts

Additional rule where the sides of relation differ.

being of different sides of relation to the deceased; for instance, a paternal uncle or aunt of the whole blood does not exclude a maternal uncle or aunt of

And where they are the same, the half blood; but a paternal uncle or aunt of the half blood, and so likewise a maternal uncle or aunt of the whole blood excludes a paternal uncle or aunt of the half blood.

16. If a man leave a paternal uncle of the half blood, and a maternal aunt of the whole blood, the former will take two-thirds in virtue of his claiming through the father, and the latter one-third in virtue of her claiming through the mother; as the property would have been divided between the parents in that proportion, had they been the claimants instead of the uncle and aunt.

17. The general rule, that those related by the same father and mother exclude those who are related by the same mother only, does not operate in the case of individuals to whom a legal share has been assigned.

18. If a man leave a whole sister and a sister by the same mother only, the former will take half the estate and the latter one-sixth, the remainder reverting to the whole sister; and if there be more than one sister by the same mother only, they will take one-third, and the remaining two-thirds will go to the whole sister.

19. Where there are two heirs, one of whom stands in a double relation: for instance, if a man die leaving a maternal uncle, and a paternal uncle who is also his maternal uncle, the former will take one-third, and the latter two-thirds, and he will be further entitled to take one-half of the third which devolved on the maternal uncle; and thus he will succeed altogether to five-sixths, leaving the other but one-sixth.

20. Secondly, those who succeed in virtue of marriage are the husband and wife, who can never be excluded in any possible case; and their shares are half for the husband, and a fourth for the wife, where there are no children, and a fourth for the husband, and an eighth for the wife, where there are children.

21. Where a wife dies, leaving no other heir, her whole property devolves on her husband; and where a husband dies leaving no other heir but his wife, she is only entitled to one-fourth of his property, and the remaining three-fourths will escheat to the public treasury.

22. If a sick man marry and die of that sickness without having consummated the marriage, his wife shall not inherit his estate; nor shall he inherit if his wife die before him, under such circumstances. But if a sick woman marry, and her husband die before her she shall inherit of him; though the marriage was never consummated, and though she never recovered from that sickness.

23. If a man on his deathbed divorce his wife, she shall inherit, provided he die of that sickness within one year from the period of divorce; but not if he lived for upwards of a year.

24. In case of a reversible divorce, if the husband die within the period of his wife's probation, or if she die within that period, they have a mutual right to inherit each other's property.

And of irregular marriage.

26. Thirdly, those

Of claimants by *Willa*.

Two descriptions of.

mutual compact, where two persons reciprocally engage, each to be heir of the other.

The first preferred.

General rules of exclusion.

son's son, and a maternal uncle excludes a paternal grand-uncle; whereas according to the orthodox doctrine in such cases the daughter would get only half, and the maternal uncle would be wholly excluded by the paternal uncle of the father.

Difference of allegiance does not exclude, nor homicide unless wilful.

The homicide, to disqualify, must have been of *malice prepense*.

The doctrine of the increase not admitted.

Example.

divided into twelve, of which the husband is entitled to three, or a fourth; the parents to two-sixths, or four, and the daughter to half; but there remain only five shares for her instead of six, or the moiety to which she is entitled. In this case, according to the orthodox doctrine, the property would have been made into thirteen parts to give the daughter her six shares; but according to the *Inamiya* tenets, the daughter must be content with the five shares that remain, because in certain cases her right as a legal sharer is liable to extinction; for instance, had there been a son, the daughter would not have been entitled to any specific share, and she would become a residuary; whereas the husband or parents can never be deprived of a legal share, under any circumstances.

Of the return.

32. Where the assets exceed the number of heirs, the surplus reverts to the heirs. The husband is entitled to share in the return; but not the wife. The mother also is not entitled to share in the return, if there are brethren: and where there is any individual possessing a double relation, the surplus reverts exclusively to such individual.

33. On a distribution of the estate, the elder son, if he be worthy, is entitled to his father's sword, his Koran, his wearing apparel, and his ring.

25. The wife by an usufructuary, or temporary marriage, has no title to inherit.

who succeed in virtue of *Willa*; but they never can inherit so long as there is any claimant by consanguinity or marriage.

27. *Willa* is of two descriptions that which is derived from manumission, where the emancipator, by such act, derives a right of inheritance; and that which depends on

28. Claimants under the latter title are excluded by claimant under the former.

29. The general rules of exclusion, according to this sect, are similar to those contained in the orthodox doctrine; except that they make no distinction between male and female relations. Thus a daughter excludes a

30. Difference of allegiance is no bar to inheritance, and homicide, whether justifiable or accidental, does not operate to exclude from the inheritance.

31. The legal number of shares into which it is necessary to make the property, cannot be increased if found insufficient to satisfy all the heirs without a fraction. In such case a proportionate deduction will be made from the portion of such heir as may, under certain circumstances, be deprived of a legal share, or from any heir whose share admits of diminution. For instance, in the case of a husband, a daughter and parents. Here the property must be

entitled to three, or a fourth; the parents to two-sixths, or four, and the daughter to half; but there remain only five shares for her instead of six, or the moiety to which she is entitled. In this case, according to the orthodox doctrine, the property would have been made into thirteen parts to give the daughter her six shares; but according to the *Inamiya* tenets, the daughter must be content with the five shares that remain, because in certain cases her right as a legal sharer is liable to extinction; for instance, had there been a son, the daughter would not have been entitled to any specific share, and she would become a residuary; whereas the husband or parents can never be deprived of a legal share, under any circumstances.

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CHAPTER III.

OF SALE.

- Definition of sale. 1. Sale is defined to be mutual and voluntary exchange of property for property.
- How effected. 2. A contract of sale may be effected by the express agreement of the parties, or by reciprocal delivery.
3. Sale is of four kinds; consisting of commutation of goods for goods :  
Four kinds of. • of money for money; of money for goods; and of  
species of this kind of contract. goods for money; which last is the most ordinary
- For denominations of. 4. Sales are either absolute, conditional, or imperfect, or void.
- Of an absolute sale. 5. An absolute sale is that which takes place immediately; there being no legal impediment.
6. A conditional sale is that which is suspended on the consent of the  
Of a conditional sale. proprietor, or (where he is a minor) on the consent  
of his guardian, in which there is no legal impediment, and no condition requisite to its completion but such consent.
- Of an imperfect sale. 7. An imperfect sale is that which takes effect on seizure; the legal defect being cured by such seizure.
8. A void sale is that which can never take effect; in which the  
Of a void sale. articles opposed to each other, or one of them, not bearing any legal value, the contract is null.
9. The consideration may consist of whatever articles, bearing a legal  
Of the consideration. value, the seller and purchaser may agree upon; and the property may be sold for prime cost, or for more, or for less than prime cost.
10. It is requisite that there should be two parties to every contract  
Of the parties. of sale, except where the seller and purchaser employ the same agent, or where a father or a guardian makes a sale on behalf of a minor, or where a slave purchases his own freedom by permission of his master.
11. It is sufficient that the parties have a sense of the obligation they  
Who may contract. contract, and a minor, with the consent of his guardian, or a lunatic in his lucid intervals, may be contracting parties.
12. In a commutation of goods for goods, or of money for money, it  
Postponing payment illegal. is illegal to stipulate for a future period of delivery; but in a commutation of money for goods or of goods for money, such stipulation is authorised.
- Exception.
13. It is essential to the validity of every contract of sale, that the  
Certainty requisite. subject of it, and the consideration, should be so determinate as to admit of no future contention regarding the meaning of the contracting parties.
14. It is also essential that the subject of the contract should be in  
Other requisite conditions. actual existence at the period of making the contract, or that it should be susceptible of delivery, either immediately or at some future definite period.



15. In a commutation of money for money or of goods for goods, if the articles opposed to each other are of the nature of similars, equality in point of quantity is an essential condition.
- Equality when requisite.
16. It is unlawful to stipulate for any extraneous condition, involving an advantage to either party, or for any uncertainty which might lead to future litigation; but if the extraneous condition be actually performed, or the uncertainty removed, the contract will stand good.
- Illegal conditions.
- Exception.
- Of option.
17. It is lawful to stipulate for an option of dissolving the contract; but the term stipulated should not exceed three days.
18. When payment is deferred to a future period, it must be determinate and cannot be suspended on an event, the time of the occurrence of which is uncertain, though its occurrence be inevitable. For instance, it is not lawful to suspend payment until the wind shall blow, or until shall rain, nor is it lawful, even though the uncertainty be so inconsiderable as almost to amount to a fixed term; for instance, it is not lawful to suspend payment until the sowing or reaping time.
- Payment how deferrible.
19. It is not lawful to sell property in exchange for a debt due from a third party, though it is for debt due from the seller.
- Sale of a debt.
20. A resale of personal property cannot be made by the purchaser until the property shall actually have come into his possession.
- Resale of personal property.
21. A warranty as to freedom from defect and blemish, is implied in every contract of sale.
- Warranty implied.
22. Where the property sold differs, either with respect to quantity or quality, from what the seller has described it, the purchaser is at liberty to recede from the contract.
- Where the property differs from the description.
23. By the sale of land, nothing thereon, which is of a transitory nature, passes. Thus the fruit of a tree belongs to the seller, though the tree itself, being a fixture, appertains to the purchaser of the land.
- Sale of land.
24. Where an option of dissolving the contract has been stipulated by the purchaser, and the property sold is injured or destroyed in his possession, he is responsible for the price agreed upon: but where the stipulation was on the part of the seller, the purchaser is responsible for the value only of the property.
- Responsibility in case of option.
25. But the condition of option is annulled by the purchaser's exercising any act of ownership, such as to take the property out of *statu quo*.
- Option how annulled.
26. Where the property has not been seen by the purchaser, nor a sample (where a sample suffices), he is at liberty to recede from the contract, provided he may not have exercised any act of ownership; if upon seeing the property it does not suit his expectation, even though no option may have been stipulated.
- Option to purchasers of unseen property.
- Exception.

No option to sellers.

Exception.

no option was stipulated.

27. But though the property have not been seen by the seller, he is not at liberty to recede from the contract (except in a sale of goods for goods), where

Option on discovering a defect.

Exception.

28. A purchaser who may not have agreed to take the property with all its faults, is at liberty to return it to the seller on the discovery of a defect, of which he was not aware at the time of the purchase, unless while in the hands of the purchaser it received a further blemish : in which case he is only entitled to compensation.

29. But if the purchaser have sold such faulty article to a third person, he cannot exact compensation from the original seller ; unless by having made an addition to the article prior to the sale, he was precluded from returning it to the original seller.

Rule in case of re-sale.

Exception.

30. In a case where articles are sold, and are found on examination to be faulty, complete restitution of the price may be demanded from the seller, even though they have been destroyed in the act of trial, if the purchaser had not derived any benefit from them ; but if the purchaser had made beneficial use of the faulty articles, he is only entitled to proportional compensation.

Cases in which restitution may be demanded.

And compensation only.

31. If a person sell an article which he had purchased, and be compelled to receive back such article and to refund the purchase-money, he is entitled to the same remedy against the original seller, if the defect be of an inherent nature.

The first purchaser is on a footing with the second. Proviso.

herent nature.

32. If a purchaser, after becoming aware of a defect in the article purchased, make use of the article or attempt to remove the defect, he shall have no remedy against the seller (unless there may have been some special clause in the contract) ; such act on his part implying acquiescence.

Remedy against the seller how lost.

33. It is general rule, that if the articles sold are of such a nature as not easily to admit of separation or division without injury, and part of them, subsequently to the purchase, be discovered to be defective, or to be the property of a third person, it is not competent to the purchaser to keep a part and to return a part, demanding a proportional restitution of the price for the part returned. In this case he must either keep the whole, demanding compensation for the proportion that is defective, or he must return the whole, demanding complete restitution of the price. It is otherwise where the several parts may be separated without injury.

General rules for the right of restitution.

And those of compensation.

where the several parts

34. The practices of forestalling, regrating, and engrossing, and of selling on Friday, after the hour of prayer, are all prohibited, though they are valid.

Illegal practices.

## CHAPTER IV.

### OF SHUF<sup>aa</sup>, OF PRE-EMPTION.

1. *Shuf<sup>aa</sup>*, or the right of pre-emption, is defined to be a power of possessing property which has been sold, by paying a sum equal to that paid by the purchaser.

Definition of pre-emption.

2. The right of pre-emption takes effect with regard to property sold, or parted with by some means equivalent to sale, but not with regard to property the possession of which has been transferred by gift, or by will, or by inheritance; unless the gift was made for a consideration, and the consideration was expressly stipulated; but pre-emption cannot be claimed where the donor has received a consideration for his gift, such consideration not having been expressly stipulated.

3. The right of pre-emption takes effect with regard to property, whether divisible or indivisible; but it does not apply to moveable property, and it cannot take effect until after the sale is complete, as far as the interest of the seller is concerned.

Additional rules.  
Not restricted to any particular class.

Rights and privileges of.  
under the right of pre-emption.

Who may claim pre-emption.

and a neighbour.

7. It is necessary that the person claiming this right, should declare his intention of becoming the purchaser, immediately on hearing of the sale, and that he should, with the least practicable delay, make affirmation, intention, either in the presence of the seller, or of the purchaser, or on the premises.

8. The above preliminary conditions being fulfilled, the claimant of pre-emption is at liberty at any subsequent period to prefer his claim to a Court of Justice.

9. The first purchaser has a right to retain the property until he has received the purchase-money from the claimant by pre-emption, and so also the seller in a case where delivery may not have been made.

10. Where an intermediate purchaser has made any improvements to the property, the claimant by pre-emption must either pay for their value, or cause them to be removed; and where the property may have been deteriorated by the act to the intermediate purchaser, he (the claimant) may insist on a proportional abatement of the price; but where the deterioration has taken place without the instrumentality of the intermediate purchaser, the claimant by pre-emption must either pay the whole price, or resign his claim altogether.

11. But a claimant by pre-emption having obtained possession of, and made improvements to property, is not entitled to compensation for such improvements, if it should afterwards appear that the property belonged to a third person. He will, in this case, recover the price from the seller or from the intermediate purchaser (if possession had been given), and he is at liberty to remove his improvements.

12. Where there is a dispute between the claimant by pre-emption and the purchaser as to the price paid, and neither

Where there is a dispute as to the price paid.

party have evidence, the assertion, on oath, of the purchaser must be credited; but where both parties have evidence, that of claimant by pre-emption should be received in preference.

13. There are many legal devices by which the right of pre-emption

Legal devices by which a claim of pre-emption may be evaded.

may be defeated. For instance, where a man fears that his neighbour may advance such a claim, he can sell all his property with the exception of that part immediately bordering on his neighbour's; and where he is apprehensive of the claim being advanced by a partner, he may, in the first instance, agree with the purchaser for some exorbitant nominal price, and afterwards commute that price for something of an inferior value; when, if a claimant by pre-emption appear, he must pay the price first stipulated, without reference to the subsequent commutation.

## CHAPTER V.

### OF GIFTS.

Definition of gift.

1. A gift is defined to be conferring of property without a consideration.

Essential consideration of.

2. Acceptance and seizin, on the part of the donee, are as necessary as relinquishment on the part of the donor.

Cannot be made to take effect *in futuro*.

3. A gift cannot be made to depend on a contingency, nor can it be referred to take effect at any future definite period.

4. It is necessary

Delivery and seizin requisite.

that a gift should be accompanied by delivery of possession, and that seizin should take effect immediately, or, if at a subsequent period, by desire of the donor.

5. A gift cannot

The thing given must be actually existing at the time.

be made of any thing to be produced *in futuro*; although the means of its production may be in the possession of the donee. The subject of the gift must be actually in existence at the time of the donation.

6. The gift of property which is undivided, and mixed with other property, admitting at the same time of division or

An undefined gift of divisible property not valid.

separation, is null and void, unless it be defined previous to delivery; for delivery of the gift cannot in

that case be made without including something which forms no part of the gift.

7. In the case of a gift made to two or more donees, the interest of

Rules in case of two or more donees.

each donee must be defined either at the time of making the gift, or on delivery.

8. A gift cannot

A gift must express, and must be entirely relinquished by the donor.

be implied. It must be express and unequivocal, and the intention of the donor must be demonstrated by his entire relinquishment of the thing given, and the gift is null and void where he continues to exer-

cise any act of ownership over it.

9. The cases of a house given to a husband by a wife, and of property

Exceptions.

given by a father to his minor child, form exceptions to the above rule.

10. Formal delivery and seizin are not necessary in the case of a gift to a trustee, having the custody of the article given, nor in the case of a gift to a minor. The seizin of the guardian in the latter case is sufficient.

11. A gift on a deathbed is viewed in the light of a legacy, and can not take effect for more than a third of the property; consequently no person can make a gift of any part of his property on his deathbed to one of his heirs, it not being lawful for one heir to take a legacy without the consent of the rest.

Resumption admissible. 12. A donor is at liberty to resume his gift, except in the following instances:

13. A gift cannot be resumed where the donee is a relation; nor where anything has been received in return; nor where it has received any accession; nor where it has come into possession of a second donee, or into that of the heirs of the first.

14. Besides the ordinary species of gift, the law enumerates two contracts under the head of gifts, which however more nearly resemble exchange or sale. They are technically termed *Hiba bil Iwaz*, mutual gift, or gift for a consideration, and *Hiba ba shart ul Iwaz*, gift on stipulation, or on promise of a consideration.

15. *Hiba bil Iwaz* is said to resemble a sale in all its property; the same conditions attach to it, and the mutual seizin of the donees is not, in all cases, necessary.

16. *Hiba ba shart ul Iwaz*, on the other hand, is said to resemble a sale in the first stage only; that is, before the consideration for which the gift is made has been received, and the seizin of the donor and donee is therefore a requisite condition.

## CHAPTER VI.

### OF WILLS.

1. There is no preference shown to a written over a nuncupative will, and they are entitled to equal weight, whether the property which is the subject of the will be real or personal.

2. Legacies cannot be made to a larger amount than one-third of the testator's estate without the consent of the heirs.

3. A legacy cannot be left to one of the heirs without the consent of the rest.

4. There is this difference between the property which is the subject of inheritance and that which is the subject of legacy. The former becomes the property of the heir by the mere operation of law; the other does not become the property of the legatee until his consent shall have been obtained either expressly or impliedly.

5. The payment of legacies to a legal amount precedes the satisfaction of claims of inheritance.

- And debts precede legacies. 6. All the debts due by the testator must be liquidated before the legacies can be claimed.
7. An acknowledgment of debt in favour of an heir on a deathbed resembles a legacy; inasmuch as it does not avail for more than a third of the estate.
8. It is not necessary that the subject of the legacy should exist at the time of the execution of the will. It is sufficient for its validity that it should be in existence at the time of the death of the testator.
9. The general validity of a will is not affected by its containing illegal provisions, but it will be carried into execution as far as it may be consistent with law.
10. A person not being an heir at the time of the execution of the will, but becoming one previous to the death of the testator, cannot take the legacy left to him by such will; but a person being an heir at the time of the execution, and becoming excluded previously to the testator's death, can take the legacy left to him by such will.
11. If a man bequeath property to one person, and subsequently make a bequest of the same property to another individual the first bequest is annulled; so also if he sell or give the legacy to any other individual; these acts amount to a retraction of the legacy.
12. Where a testator bequeaths more than he legally can to several legatees, and the heirs refuse to confirm his disposition, a proportionate abatement must be made in all the legacies.
13. Where a legacy is left to an individual, and subsequently a larger legacy to the same individual, the larger legacy will take effect, but where the larger legacy was prior to the smaller one, the latter only will take effect.
14. A legacy being left to two persons indiscriminately, if one of them die before the legacy is payable, the whole will go to the survivor; so also in the case of an heir's half was left to each of them, the heirs; so also in the case of an heir's half was left to each of them, legatees.
15. Where there is no executor appointed, the father of the grantor father may act as executor, or in their default their executors.
16. A Muhammadan should not appoint a person of a different persuasion to be his executor and such appointment is liable to be annulled by the ruling power.
17. Executors having once accepted cannot subsequently decline the trust.
18. Where there are two executors, it is not competent to one of them to act singly, except in cases of necessity, and where benefit to the estate must certainly accrue.

## CHAPTER VII.

## OF MARRIAGE, DOWER, DIVORCE AND PARENTAGE.

Definition of marriage. 1. Marriage is defined to be a contract founded on the intention of legalizing generation.

Essentials of. 2. Proposal and consent are essential to a contract of marriage.

Conditions of. 3. The conditions are discretion, puberty, and freedom of the contracting parties. In the absence of the first condition the contract is void *ab initio*; for a marriage cannot be contracted by an infant without discretion, nor by a lunatic. In the absence of the two latter conditions the contract is voidable; for the validity of marriages contracted by discreet minors, or slaves, is suspensive on the consent of their guardians or masters. It is also necessary that there should be no legal incapacity on the part of the woman; that each party should know the agreement of the other; that there should be witnesses to the contract, and that the proposal and acceptance should be made at the same time and place.

4. There are only four requisites to the competency of witnesses to a marriage contract; namely, freedom, discretion, puberty, and profession of the Musalman faith.

Competency of witnesses to. 5. Objections as to character and relation do not apply to witnesses in a contract of marriage as they do in other contracts.

Special rules regarding them. 6. A proposal may be made by means of agency, or by letter; provided there are witnesses to the receipt of the message or letter, and to the consent on the part of the person to whom it was addressed.

Proposal may be made by agency, or by letter. 7. The effect of a contract of marriage is to legalize the mutual enjoyment of the parties; to place the wife under the dominion of the husband; to confer on her the right of dower, maintenance, and habitation; to create between the parties, prohibited degrees of relation and reciprocal right of inheritance; to enforce equality of behaviour towards all his wives on the part of the husband with a power of obedience on the part of wives.

Effect of the contract. 8. A freeman may have four wives, but a slave can have only two.

9. A man may not marry his mother, nor his grand-mother, nor his mother-in-law, nor his step-mother, nor his grand-mother, nor his daughter, nor his step-daughter, nor his daughter-in-law, nor his step-daughter, nor his sister, nor his foster-sister, nor his niece, nor his aunt nor his nurse.

Enumeration of prohibited relations. 10. Nor is it lawful for a man to be married at the same time to any two women who stand in such a degree of relation to each other, as that, if one of them had been a male, they could not have intermarried.

Additional prohibitions. 11. Marriage cannot be contracted with a person who is a slave of the party; but the union of a freeman with a slave, not being his property, with the consent of the

Of freemen and slaves.

master of such slave, is admissible, provided he be not already married to a freewoman.

Of the religion of the parties.

12. Christians, Jews, and persons of other religions, believing in one God, may be espoused by Muhammadans.

13. Marriage will be presumed, in a case of proved continual co-habitation, without the testimony of witnesses; but the presence of witnesses is nevertheless requisite at all nuptials.

Presumption of marriage.

14. A woman having attained the age of puberty, may contract herself in marriage with whomsoever she pleases; and her guardian has no right to interfere if the match be equal.

Capacity to contract.

15. If the match be unequal, the guardians have a right to interfere with a view to set it aside.

16. A female not having attained the age of puberty cannot lawfully contract herself in marriage without the consent of her guardians, and the validity of the contract entirely depends upon such consent.

Where an infant contracts.

Limitation.

17. But in both the preceding cases the guardians should interfere before the birth of issue.

18. A contract of marriage entered into by a father or grandfather, on behalf of an infant, is valid and binding, and the infant has not the option of annulling it on attaining maturity; but if entered into by any other guardian, the infant so contracted may dissolve the marriage on coming of age, provided that such delay does not take place as may be construed into acquiescence.

Contract when dissoluble by the parties.

19. Where there is no paternal guardian, the maternal kindred may dispose of an infant in marriage; and in default of maternal guardians, the Government may supply their place.

Of guardians for marriage.

20. A necessary concomitant of a contract of marriage is dower, the maximum of which is not fixed, but the minimum is ten dirms, and it becomes due on the consummation of the marriage (though it is usual to stipulate for delay as to the payment of a part) or on the death of either party or on divorce.

Of dower.  
Minimum of.  
When due.

21. Where no amount of dower has been specified, the woman is entitled to receive a sum equal to the average rate of dower granted to the females of her father's family.

Where no amount fixed.

22. Where it may not have been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand.

Whether prompt or deferred.

23. It is a rule that whatsoever is prohibited by reason of consanguinity is prohibited by reason of fosterage; but as far as marriage is concerned, there are one or two exceptions to this rule: for instance, a man may marry his sister's foster-mother, or his foster-sister's mother, or his foster-son's sister, or his foster brother's sister.

Disqualification of fosterage and consanguinity.

Exceptions.



24. A husband may divorce his wife without any misbehaviour on her part, or without assigning any cause; but before the divorce becomes irreversible, according to the more approved doctrine, it must be repeated three times, and between each time the period of one month must have intervened, and in the interval he may take her back either in an express or implied manner.

25. A husband cannot again co-habit with his wife who has been three times irreversibly divorced, until after she shall have been married to some other individual and separated from him either by the death or divorce; but this is not necessary to a re-union, if she have been separated by only one or two divorces.

26. If a husband divorce his wife on his deathbed, she is nevertheless entitled to inherit, if he die before the expiration of the term (four months and ten days) of probation, which she is bound to undergo before contracting a second marriage.

27. A vow of abstinence made by a husband, and maintained inviolate for a period of four months, amounts to an irreversible divorce.

28. A wife is at liberty, with her husband's consent, to purchase from him her freedom from the bonds of marriage.

29. Another mode of separation is by the husband's making oath, accompanied by an imprecation as to his wife's fidelity, and if he in the same manner deny the parentage of the child of which she is then pregnant, it will be bastardized.

30. Established impotency is also a ground for admitting a claim to separation on the part of the wife.

31. A child born six months after marriage is considered to all intents and purposes the offspring of the husband; so also a child born within two years after the death of her husband or after divorce.

32. The first born child of a man's female slave is considered his offspring, provided he claim the parentage, but not otherwise; but if after his having claimed the parentage of one, the same woman bear another child to him, the parentage of that other will be established without any claim on his part.

33. If a man acknowledge another to be his son, and, there be nothing which obviously renders it impossible that such relation should exist between them, the parentage will be established.

## CHAPTER VIII.

### OF GUARDIANS AND MINORITY.

1. All persons, whether male or female, are considered minors until after the expiration of the sixteenth year, unless symptoms of puberty appear at an earlier period.

2. There is a sub-division of the state of minority, though not so minute as in the Civil Law, the term minor being used indiscriminately to signify all persons under

the age of puberty: but the term *Sabi* is applied to persons in a state of infancy, and term *Murahik* to those who have nearly attained puberty.

Of their privileges. 3. Minors have not different privileges at different stages of their minority, as in the English Law.

Of guardians. 4. Guardians are either natural or testamentary.

5. They are also near and remote. Of the former description are fathers and paternal grandfathers and their executors and the executors of such executors. Of the

latter description are the more distant paternal kindred, and their guardianship extends only to matters connected with the education and marriage of their wards.

6. The former description of guardians answers to the term of curator in the Civil Law, and of manager in the Bengal Code of Regulations; having power over the property of a minor for purposes beneficial to him; and in their default this power does not vest in the remote guardians, but devolves on the ruling authority.

7. Maternal relations are the lowest species of guardians, as their right of guardianship for the purposes of education and marriage takes effect only where there may be no paternal kindred nor mother.

8. Mothers have the right (and widows *durante viduitate*) to the custody of their sons until they attain the age of seven years, and of their daughters until they attain the age of puberty.

9. The mother's right is forfeited by marrying a stranger, but reverts on her again becoming a widow.

10. The paternal relations succeed to the right of guardianship, for the purposes of education and marriage, in proportion to the proximity of their claims to inherit the estate of the minor.

11. Necessary debts contracted by any guardian for the support or education of his ward must be discharged by him on his coming of age.

12. A minor is not competent *sui juris* to contract marriage, to pass a divorce, to manumit a slave, to make a loan, or contract a debt, or to engage in any other transaction of a nature not manifestly for his benefit, without the consent of his guardian.

13. But he may receive a gift, or do any other act, which is manifestly for his benefit.

14. A guardian is not at liberty to sell the immoveable property of his ward, except under seven circumstances, viz, 1st, where he can obtain double its value; 2ndly, where the minor has no other property, and the sale of it is absolutely necessary to his maintenance; 3rdly, where the late incumbent died in debt which cannot be liquidated but by the sale of such property; 4thly where there are some general provisions in the will which cannot be carried into effect without such sale; 5thly, where the produce of the property is not sufficient to defray the expenses of keeping it; 6thly, where the property may be in

Exceptions.

danger of being destroyed ; 7thly, where it has been usurped, and the guardian has reason to fear that there is no chance of fair restitution.

15. Every contract entered into by a near guardian on behalf and for the benefit of the minor, and every contract entered into by a minor with the advice and consent of his near guardian, as far as regards his personal property is valid and binding upon him ; provided there be no circumvention or fraud on the face of it.

Exception.   
 Responsibility of.   
 16. Minors are civilly responsible for any intentional damage or injury done by them to the property or interests of others, though they are not liable in criminal matters to retaliation or to the *ultimum supplicium*, but they are liable to discretionary chastisement and correction.

## CHAPTER X.

### OF ENDOWMENTS.

1. An endowment signifies the appropriation of property to the service of God ; when the right of the appropriator becomes divested, and the profits of the property so appropriated are devoted to the benefit of mankind.

2. An endowment is not a fit subject of sale, gift, or inheritance ; and if the appropriation is made *in extremis*, it takes effect only to the extent of a third of the property of the appropriator. Undefined property is a fit subject of endowment.

3. Endowed property may be sold by judicial authority, when the sale may be absolutely necessary to defray the expense of repairing its edifices or other indispensable purposes, and where the object cannot be attained by farming or other temporary expedient.

4. In case of the grant of an endowment of an individual with reversion to the poor, it is not necessary that the grantees specified shall be in existence at the time. For instance, if the grant be made in the name of the children of A with reversion to the poor, and A should prove to have no children, the grant would nevertheless be valid, and the profits of the endowment will be distributed among the poor.

5. The ruling power cannot remove the superintendent of an endowment appointed by the appropriator, unless on proof of misconduct ; nor can the appropriator himself remove such person, unless the liberty of doing so may have been specially reserved to him at the time of his making the appropriation.

6. Where the appropriator of an endowment may not have made any express provision as to who shall succeed to the office of superintendent on the death of the person nominated by himself, and he may not have left an executor, such superintendent may, on his deathbed, appoint his own successor, subject to the confirmation of the ruling power.

7. The specific property endowed cannot be exchanged for other property, unless a stipulation to this effect may have been made by the appropriator, or unless circum-

stances should render it impracticable to retain possession of the particular property, or unless manifest advantage be derivable from the exchange; nor should endowed lands be farmed out on terms inferior to their value, nor for a longer period than three years, except when circumstances render such measure absolutely necessary to the preservation of the endowment.

8. The injunctions of the appropriator should be observed except in the following cases: If he stipulate that the superintendent shall not be removed by the ruling authorities, such person is nevertheless removable by them on proof of misconduct. If he stipulate that the appropriated lands shall not be left out to farm for a longer period than one year, and it be difficult to obtain a tenant for so short a period, or, by making a longer lease, it be better calculated to promote the interests of the establishment, the ruling authorities are at liberty to act without the consent of the superintendent. If he stipulate that the excess of the profits be distributed among persons who beg for it in the mosque, it may nevertheless be distributed in other places and among the necessitous, though not beggars. If he stipulate that daily rations of food be served out to the necessitous, the allowance may nevertheless be made in money. The ruling authorities have power to increase the salaries of the officers attached to the endowment, when they appear deserving of it, and the endowed property may be exchanged, when it may seem advantageous, by order of such authorities; even though the appropriator may have expressly stipulated against an exchange.

9. Where an appropriator appoints two persons joint superintendents; it is not competent to either of them to act separately; but where he himself retains a moiety of the superintendence, associating another individual, he (the appropriator) is at liberty to act singly and of his own authority in his self-created capacity of joint superintendent.

10. Where an appropriation has been made by the ruling power, from the funds of the public treasury, for public purposes, without any specific nomination, the superintendence should be entrusted to some person most deserving point of learning; but in private appropriations, with the exceptions above mentioned, the injunctions of the founder should be fulfilled.

Cases in which the will of the founder may be contravened.

Case of two superintendents.

General rule for public and private endowments.



# B. L. EXAMINATION PAPERS.

## JURISPRUDENCE.



What is the appropriate subject of Jurisprudence, and what is its province ?

Give the meaning of the expressions *jus in rem*, and *jus in personam* ?

Give the distinction between *real* and *personal* servitudes, and give examples of each ?

State the chief distinctions between the English and the Roman system of equity ?

Previously to 9 Geo. IV c. 73, which established Courts for the relief of Insolvent debtors in British India in the year 1829, how was relief granted to insolvent debtors in the Presidency Towns ?

In what cases is a Coroner called upon to act ; and what are his duties ?

What matters and subjects are expressly saved from being affected by the provisions of the Indian Majority Act of 1875 ?

B, is born in Calcutta at 11 A. M., on the 29th February 1880 (leap year), and has a British Indian domicile, his property being under the charge of a guardian duly appointed by a Court of Justice, when does B attain majority ?

What jurisdiction does the Court of Wards possess over disqualified proprietors ?

Mention the most important Statutes by which, at different times subsequent to the Great Charter of Liberties obtained by King John, the political liberty of England has been asserted ?

What are the civil disabilities to which aliens living in the United Kingdom are subject ?

A minor residing in Burdwan has property in the districts of Huguli, Calcutta, and Purneah. In the Civil Courts of which of these districts should an application be made, under Act XL of 1858, for the appointment of a person to take charge of such minor's property ?

What is Positive law ? How does it differ from (1) Customary law, (2) International law ? In what sense is it true to say that a Sovereign has no *right* to confiscate the property of his subjects ?

Explain exactly the meaning of "*jus in rem*." A has a right of way over B's land, what is the nature of A's right ?

Examine the distinction between Civil Injuries and Crimes. How far is the end in a civil proceeding simply redress ?

Compare the *Jus Prætorium* and English Equity. Is it true to say that Judges make law ?

Analyse carefully the meaning of Possession, referring particularly to the following cases (1) guardian and infant, (2) landlord and tenant.

What is a Sanction ? How do you distinguish it from an Obligation ? What are the different kinds of Sanction ?

Mention the chief provisions of the Indian Councils Act 1861 (24 and 25 Vict. c. 67) as summarised by Mr. Cowell.

How far did the establishment of the High Courts represent an alteration in the administration of justice? Give an outline of the nature and extent of the jurisdiction of the Calcutta High Court.

Distinguish (1) natural born subjects, (2) aliens, (3) denizens, (4) persons naturalized.

What do you mean by the Royal Prerogative? What are the rights which the Sovereign possesses as being the first in military command? In what sense is it true to say that the Sovereign is the "fountain of justice"?

Of what persons is the Court of Wards empowered to take charge? Does it make any difference with respect to the jurisdiction of the Court that an estate is held in joint proprietorship?

To whom may a certificate of administration under Act XI. of 1858 be granted and what are the powers thereby conferred with respect to the management of the minor's estate?

Give a short account of the Courts of Request in India prior to 1850, stating their powers.

What were the provisions of the Sessions Court Act; when was it passed, with what object, and by what Act was it repealed?

What remains of the ancient powers exercised by the Privy Council?

What does its extraordinary original jurisdiction enable the High Court to do?

What are the several kinds of *rights* as opposed to *wrongs* enumerated by Blackstone and what do they include?

Give examples of obligations to which there is no corresponding rights.

Who are disqualified from acting as guardians to persons who are under the charge of the Court of Wards, and under what circumstances is the rule relaxed?

What are the duties which the Sovereign owes to the people as expressed in the coronation oath?

What are the chief provisions of the Naturalization Acts of 1870 and 1872?

What are the English Statutory exceptions to the maxim "*Nullum tempus occurrit regi*"?

What are the conditions necessary to a marriage under Act III of 1872?

By what tenure do the Judges in England now hold office and how did they hold it formerly? In what reign was the alteration made? How may a Judge lawfully be removed from office?

What is the common characteristic of all laws? Compare *model law* with *positive law*. Give an instance in which the two kinds of law may be said to conflict.

Describe a *natural society*. Explain how a natural society may become a *society political*. Show that the bare definition of a society political does not convey the full and complete idea of sovereignty.

Distinguish between *rights in rem* and *rights in personam*. Under which of those heads would you place conjugal or marital rights? And why?

Point out the relation, if any, between *Jus gentium* and *International law*. Is international law a branch of positive law? Give your reasons.

Give a brief sketch of the rise and growth of Prætorian law (*Jus Prætorium*). Note the points of difference between Roman and English Equity.

Explain the maxim—the King can do no wrong.

Enumerate the different branches of the royal authority or power.

Who are meant by disqualified proprietors? By virtue of which of its prerogatives does the Crown take over charge of their property through the Court of Wards?

What are the powers and liabilities of the holder of a certificate under Act XL of 1858? When will the minor, on account of whose property a certificate has been granted, be deemed to have attained his majority?

What is meant by *civil marriage*? Relate some of its incidents. How, if at all, is the *status* of a party marrying in that form likely to be affected?

State some of the important provisions of the Regulating Act (13 Geo. III, c. 63). What was the immediate consequence of its introduction?

Compare in general terms the powers and functions of the Original Side of the High Court with those of the highest Court of original Jurisdiction in the Mofussil.

Point out the leading distinctions between the Presidency town and the Mofussil. What is the historical origin of the distinction?

What do you understand by legal obligation? Distinguish between (1) absolute (2) relative (3) primary and (4) secondary obligations.

If a man's property be wilfully injured what is the nature (1) of the obligation on the part of the person causing the injury to suffer punishment for mischief or trespass and (2) of the obligation to make compensation to the party injured.

What is meant by a juristical person? In what respects does a corporation differ from a partnership?

Give examples (1) of absolute and (2) of conditional ownership. Distinguish between co ownership and the ownership of juristical persons.

When and in what way was the use and enjoyment of their own laws and usages first secured to Hindus of the Bengal Presidency? In what enactments are the limits of such use and enjoyment and the measures taken to secure the same in the three Presidencies to be found?

State generally the nature of the interest which a Hindu widow possesses in her husband's property. In what respect is her proprietary right of inheritance limited?

State the legislative powers of the Governor General in Council. In respect of bills, for what purposes is it necessary for the legislative Councils of the two Subordinate Presidencies to obtain the previous sanction of the Governor General.

In whom is the power to suspend or remove judicial officers subordinate to the High Court vested? What are the powers of the High Court over such officers?

When is parol evidence of a testator's intention admissible? When does a misnomer or misdescription of a legatee not prevent the legacy from taking effect?

Distinguish between a specific legacy and a demonstrative legacy. To what property is a residuary legatee entitled?

A testator bequeaths the residue of his estate to A, B and C to be equally divided between them. A dies before the testator. What becomes of A's one-third?

Explain (1) election and (2) ademption. What is the effect of a subsequent gift by way of settlement or otherwise to a legatee?

What is meant by the Prerogative of the Crown of England? By what is it limited.



## REAL PROPERTY.

What is 'estate tail'? State briefly the object of the Statute De Donis Conditionalibus.

How far does an English "life estate" resemble the estate of a Hindu widow? In what respects do these estates differ from each other?

Distinguish between a "vested" interest and a "contingent" interest, between a "reversion" and a "remainder."

A grant is made to A for his life and one week after his death to B and his heirs. Does B get a good remainder? Give reasons for your answer.

A grant is made to A, a bachelor, for his life, and after the determination of that estate, by forfeiture or otherwise, in his lifetime, to B and his heirs during the life of A, and after A's death to the eldest son of A and the heirs of the body of such son. How do you designate the interest of B and the interest of the eldest son of A?

What was the general object and effect of the Statute of Uses? Explain how it gave rise to the distinction between legal and equitable estates in trust-property.

State the Rule against perpetuity (with exceptions if any) under Act X of 1865, under Act IV of 1882 and under the Hindu law of wills.

Define "mortgage by conditional sale," "English mortgage" and "suit for foreclosure." What orders are necessary in a decree for the plaintiff in a foreclosure suit?

W mortgaged 3 villages *a*, *b* and *c* to X, and after that, two of them *a* and *b* to Y and lastly the village *a* only to Z. What are the rights of Y against X and Z, as regards the village *a*?

Y had no notice of the mortgage to X, but Z took the mortgage of *a* with full notice of the prior mortgages. How far should the securities be marshalled? Could Z by paying off the mortgage to X gain priority over Y as regards the village *a*?

Explain—"specific legacy," "demonstrative legacy," and "ademption of legacies."

A, governed by the Indian Succession Act, died 6 months after executing his will whereby he bequeathed his estate to B for his life and after his decease to a hospital. C the son of a half-sister of A was alive at the time of A's death. State the rules of law, which apply to this case, and the result of their application.

What is the rule of priority, under Act III of 1877, between a registered document and an oral agreement relating to the same property, and what is the rule as between a registered and an unregistered document relating to the same land?

What are the essential conditions in the acquisition of a right of way over another's land? Give an example (1) of a *contentious*, (2) of a *clandestine*, (3) of a *permissive* enjoyment or user. What explanation is given in the Act, of the word "interruption?"

Explain "Malikana," "Mocurreedar" and "Istemrardar." How were the rights of Mocurreedars and Istemrardars dealt with under Regulation VIII of 1793? To what extent were proprietors of estates allowed by Reg. XIX of 1793 to resume Lakhiraj tenures within their estates? What steps should a Zemindar take to cause the sale of a Putni Taluk under Reg. VIII of 1819? What are the rights of a Darpatnidar who has saved the Putni by depositing the amount due to the zemindar?

What are the different kinds of Chur lands mentioned in Reg. XI of 1825? Explain the main principles upon which proprietary claims to Chur lands are settled.

What is the nature of the right acquired by a purchaser of a fractional share of an estate sold for its own arrears under Act XI of 1859? What are the interests protected by the Act when an entire estate is sold for its own arrears?

Define "settled" ryot. Is it necessary that any specific land should be held by him? What presumptions does the law make as to the nature of his occupation?

Upon what grounds may a decree be passed for ejection of an Occupancy Rayat under Act VIII of 1885? What is the rule of devolution of his right upon his death? In what ways are occupancy rights "extinguished?"

Distinguish between real property and personal property, and explain the nature and character of (1) an estate in fee-simple, (2) an estate in tail, (3) an estate in reversion and (4) an estate in remainder.

What are the common characteristics and distinguishing features of joint-tenancy, coparcenary and tenancy-in-common? How may joint-tenants be converted into tenants in common?

Mention the principal incidents of an estate for life.

Define (1) transfer of property, (2) mortgage by conditional sale, (3) lease of immoveable property and (4) actionable claims. What things cannot be transferred by law?

How may a mortgage of tangible immoveable property be effected? How is a lease forfeited?

What is the effect of non-registration of a document which is required by law to be registered? To what risks does a person subject himself by taking an unregistered document the registration of which is not compulsory by law?

What is a prescriptive right? How may such right be acquired? What is the effect of twelve years' adverse possession of land by a person as against the rightful owner thereof?

What do you understand by the terms executor and administrator? What are the powers of an executor under the Probate and Administration Act?

What are the restrictions imposed by the Hindu Wills Act on the power of testamentary disposition by a Hindu? Illustrate your meaning by examples.

What are the rights of a purchaser of an entire estate at a sale for arrears of revenue? On what grounds may such purchaser enhance the rent payable by an occupancy ryot?

What are lakhiraj grants? In what cases are grants for holding lands exempted from the payment of revenue made previous to 12th August 1765, invalid?

Describe the character of a Patni Talook? What are the steps a Zemindar must take for bringing such Talook to sale for arrears of rent? Should the zamindar omit to follow the procedure laid down in Regulation VIII of 1819 for realizing the arrears of rent due to him, has he any other remedy open to him, and if so, what?

What is the nature of the right acquired by a person in land gained by contiguous accretion to land owned and held by him? Has Government any and what right to such accreted land?

How does the distinction 'real property' and 'personal property' in English Law differ from 'immoveable property' and 'moveable property' in Indian Law?

What is an 'estate in fee-simple' and how may it be created?

State the principal provisions of the Statute of Uses and the causes which led to its enactment.

What is a deed and what are its requisites?

What are the different processes by which a mortgagee, who has advanced money on an English Mortgage of property situate in Calcutta, may obtain satisfaction for the mortgage-money? State briefly the procedure to be followed in each case.

Who are the persons who may redeem, or institute a suit redemption of mortgaged property?

How must an unprivileged will be executed and attested?

A Christian native of India domiciled in England dies, leaving property both moveable and immoveable in England and immoveable property in Bengal. What law or laws will regulate the succession to his property?

Of what documents is registration compulsory, and what is the period within which a document must be presented for registration?

A, the owner of a house in Calcutta was dispossessed in the year 1865 by B, who remained in possession till the year 1879, when A succeeded in regaining possession. Can A, in a suit by B, successfully plead his title? Give reasons for your answer.

Explain the terms *khudknasht*, *maurusi*, *jagir*, *ayma*, *altamgha*, *lakhiraj* and *sir*.

What grants for holding land exempt from payment of revenue were declared invalid in the Regulations of 1793, and what, if any, right to obtain settlement was reserved to grantees with respect to grants declared invalid?

How, when and where are the different notices for sale of *putni-toluk* under Regulation VIII of 1819 required to be served?

What is the effect of the sale of a fractional share of an estate for arrears of revenue, upon subordinate tenures created by the defaulting proprietor?

How is the right called the right of occupancy acquired and how may it be lost? Is the right transferable and heritable? Can the purchaser of an entire estate sold for its own arrears eject a ryot who has held land at the same rent from 1793, or a ryot who has acquired right of occupancy?

What is an estate-tail? Enumerate its different kinds, and give an instance of each.

Mention the steps by which an estate-tail has been gradually unfettered.

Describe the nature of the estate of a tenant *in tail after possibility of issue extinct*?

Under what two general heads are estates classified according to the time of their enjoyment?

"A tenant for years dies, and makes him who hath the reversion in fee his executor, whereby the term vests also in him."

Will there be a *merger* in this case? Give your reasons.

Wherein consists the difference between an estate in reversion and that in remainder? Give an instance of each.

Explain the nature of an estate in joint-tenancy. In what respects does it differ from an estate in coparcenary? How may an estate in joint-tenancy be dissolved?

What is an incorporeal hereditament? Give an instance from the Limitation Act.

What is meant by the *domicile of origin*? When can a man be said to have acquired a new domicile? Do you know of any special mode by which a domicile may be acquired in British India?

How does the question of a man's domicile determine the course of succession to his property?

Describe the order of succession to the property of an intestate—a Christian native of India, who has left no lineal descendants.

Explain—*election*; *specific legacies*, *demonstrative legacies*, and *ademption of legacies*.

When is a legacy said to lapse? Give an instance.

Define the powers and duties of an administrator. What is meant by an executor of his own wrong? What is the nature of his liabilities?

How are the rights and liabilities of the buyer defined in the Transfer of Property Act?

What provision does the law of Registration make with regard to the sale of immoveable property?

Distinguish between a *charge on property*, and a mortgage.

Enumerate the different kinds of mortgage, and explain the terms—*redemption* and *foreclosure*.

Put a case in which one out of several joint-mortgagors may claim redemption of his share of the property on payment of a proportional amount of the whole debt.

What is a Putni Taluq? Where did it originate, and when did an estate of that kind first receive Government or Statutory recognition?

What happens to the encumbrances created on his estate by the Putnidar on the sale of his property by private arrangement, or for arrears of rent?

Explain in a few words the principle which governs the acquisition of *chur* land, and state the law of *shekust pywust* or alluvium and diluvium, as laid down in Regulation XI of 1825.

How does a *ryot* acquire a right of occupancy? State the grounds on which is rent may be enhanced. When may an occupancy tenant claim abatement of rent?

(a). Explain the object of the Permanent Settlement: In what manner was that settlement effected: To what places did it extend?

And

What rights and privileges did it secure to the proprietors and the Government respectively;

(b). The Permanent Settlement is popularly called the “decennial settlement.” Is there any reason for justifying it? If not, point out the error.

(a). Explain clearly the difference between “Zemindars” “Independent talookdars” and “other actual proprietors of land paying revenue to Government,” mentioned in Regulation I of 1793.

(b). Is there anything in that Regulation which justifies the passing of laws restricting the power of the Zemindar to enhance the rent of his ryot?

(a). State fully what rights and privileges were conferred by Regulation VIII of 1793 upon the different descriptions of *Talukdars*, *Mokarrardars* and *Istimrardars*. Did that Regulation prescribe any limitation or obligation under which those rights were to be exercised?

(b). In cases of lands which were mortgaged, with whom was the settlement to be made under that Regulation?

Enumerate the different tenures and sub-tenures which may be created under (1) a zamindar, (2) a lakhirajdar, and (3) a howladar respectively.

(a). With what object was Regulation VIII of 1819 enacted? Describe the nature of, and incidents to, the tenure or tenures to which it applies.

(b). Describe the procedure to be adopted for realizing the arrears of rent of such tenure or tenures by the sale thereof.

(c). How may the defaulter, and how, and under what circumstances, may a person other than the defaulter, prevent the sale of such tenure or *ténures*? And what advantages may such other person get by preventing the sale from taking place?

(a). Is there any restriction either in Regulation VIII of 1819 or in Act XI of 1859 in respect of the person who may bid at a sale held under it?

(b). If the defaulter himself purchases the property sold under either of those laws. What rights does he acquire and what liabilities (if any) does he incur?

(a). Why is Act XI of 1859 popularly called "the sun-set law"?

(b). State the ground or grounds upon which a sale for arrears of revenue under Act XI of 1859 may be annulled by a Court of Justice:

Is such ground or are such grounds, as the case may be, absolute or subject to any limitations or restrictions?

(c). Within what time should a decree annulling such a sale, be executed? and what remedy or remedies has the purchaser in the event of a sale being annulled?

Does Act XI of 1859 make any difference between the rights of purchasers under it (i) Of an entire estate sold for its own arrears, (ii) of a fractional share of an estate sold for its own arrears, (iii) of an entire estate sold for arrears of revenue due on account of another entire estate? State clearly the rights (with their exceptions and limitations) which a purchaser acquires in each case.

By what processes may an arrear of revenue be recovered under Act XIX of 1873?

(a). State concisely the general rules declared in section 4 of Regulation XI of 1825 for the determination of claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

(b). When are those rules to be applied?

(a). Into how many classes would you divide ryots according to the rights conferred on them by Bengal Act VIII of 1869? Does that Act make any distinction between *khodkast* and *paikast* ryots?

(b). What rights has A, a ryot, acquired in each of the following cases:—

(i). A's father, who had purchased the land from B after he had cultivated it for 3 years, died after cultivating it himself for 7 years: and A after inheriting it from his father has cultivated it for 3 years.

(ii). A purchased the land from B (who had held it for 21 years on payment of an annual rent of Rs. 2) three years ago, but he has not paid any rent for it since his purchase.

(iii). A having inherited the land from his father who had cultivated it for 6 years, has held it for 7 years by sub-letting it to a *karfa* ryot and receiving from him an annual rent of Rs. 5. Give your reasons for your answer.

(a). Specify the grounds upon which the rent of a ryot having a right of occupancy may be enhanced; and say whether all or any of them apply to *bastoo* lands.

(b). What is the procedure to be followed for obtaining an enhancement of rent?

(a). What are the different kinds of mortgages in common use in the Bengal Presidency? Define the nature of, and the rights secured by each.

(b). Explain what you understand by the foreclosure of a mortgage: What mortgages may be foreclosed, and by what process?

(c). What are the respective periods of limitation for a suit instituted by a mortgagee (i) for foreclosure, (ii) for recovery from the mortgagor the possession of immoveable property mortgaged, (iii) for the recovery of the money secured by the mortgage?

From what time does the period begin to run in each case? If the fact of the suit being instituted in a particular Court affect the period of limitation or the time from which it begins to run, point it out.

(a). What is redemption, in whom is the right of redemption vested, and how may such right be enforced ?

(b). A mortgages his zemindari to B, and then executes a second mortgage of the same zemindari and the first mortgage of a house in favour of C. After that, A and B, without any notice to C, jointly execute a deed in favour of D (who was not aware of the second mortgage to C), the one selling his equity of redemption and the other assigning over to D his rights and interests as the first mortgagee of the zemindari. What rights has D acquired by his purchase, and what remedies has C either against him or A ? Give your reasons for your answer.

(a). Mention the documents the registration of which is optional ; and show the advantage of having registered (i) a conveyance of land the registration of which is optional, (ii) a contract in writing the breach of which gives a right to sue for compensation, (iii) a certified copy of a decree or order.

(b). What is a legal disability under the Indian Limitation Act ; how does it affect the period of limitation prescribed for any suit ; and how does it operate when once time has begun to run ?

(c). Explain the effect of fraud, and state clearly the effect of acknowledgment in writing as affecting the period of limitation prescribed for instituting a suit.

### LAW OF CONTRACTS AND TORTS.

Define the terms "coercion," "misrepresentation" and "undue influence" ?

What are the rights of a person whose consent to an agreement is caused by misrepresentation ?

A youth of the age of 15 is admitted into partnership, on attaining his majority what are his liabilities for obligations of the firm incurred since his admission into the partnership ? Is there any case in which he could not be held liable for such obligations ? And how does the law as laid down by the Contract Act differ in this respect from the English law ?

What are the general duties of partners with regard to the partnership business ?

Under what circumstances have the High Courts power to entertain an application for the enforcement of Public Duties ? State the form in which such an application should be made, and give the nature of the orders which in the discretion of the Courts may be passed thereon ?

When may rescission of a contract be adjudged ?

A suit under section 9 of the Specific Relief Act is dismissed by reason of the plaintiff failing to appear ; Is an application under section 103 of the Code of Civil Procedure to set aside the order of dismissal barred by the Specific Relief Act ? Give a reason for your answer.

What is meant by "Preventive Relief," can it be granted for the mere purpose of enforcing a penal law ?

Subject to what conditions has a holder of a Bill of Exchange a right to have recourse to the drawer and indorsers ?

What is a charter party, who are the usual parties thereto, and what are the mutual engagements usually entered into between such parties ?

Define the expression "debt of record," give instances of such debts ?

In what respects does the capacity of a Factor differ from that of a Broker ?

Distinguish void and voidable contracts, and give instances of each.

(i). A contracts to make certain silver ornaments for B who contracts to supply the silver. B does not supply the silver.

(ii). B contracts to deliver to A on the 1st of December 100 maunds of indigo at a certain price per maund. Subsequently A agrees to sell the indigo to C at a higher rate. On the 1st of December B tenders to A 80 maunds only.

(iii). A contracts with B for the hire of B's ship for six months from the 1st of January the price being paid in advance. On the 31st of December the ship is captured by pirates. Freight rises and A is compelled to charter a ship at a higher rate.

What are A's rights in each of the above cases ?

When does property pass upon a sale of goods (1) where the goods are unascertained at the date of the contract of sale, (2) where credit is given, (3) where part only of the goods is delivered ? Give instances.

What do you mean by an "implied warranty" ? What, if any, implied warranty exists in the sale of (1) a horse, (2) eatables, (3) a gun ?

Distinguish general from particular lien.

What acts of the creditor towards the principal debtor have the effect of discharging a surety ?

How far is a principal liable to third parties for the acts of his agent ? A, a coachman, while driving B his master runs down C and injures him. Is A liable, and if so, why ?

Define Partnership. Give illustrations. How far is the law of partnership a branch of the law of agency ? A and B are partners in a jute business. C agrees to lend A and B Rs. 10,000 for the purposes of their business, A and B agreeing to allow C ten per cent. of the profits of the business by way of interest on the loan. Has C a partnership interest in the business ? Give reasons for your answer.

What is a bill of exchange ? How far are the rules of law relating to bills of exchange exceptional ?

(i). A contracts with B to lease to him a house for 99 years. A dies before the lease is executed. (ii) B contracts with A to buy from him 100 tons of iron at Rs. 100 per ton. (iii) A contracts to sell certain lands to B. Before the time fixed for completion B is adjudicated an insolvent and A conveys the land to C without consideration. C has no notice of the contract with A. What relief (if any) is B or any person claiming through him entitled to in the above cases, and against whom ?

What is a mandatory injunction ? Give instances. A contracts to serve B for three years as manager of B's coffee estate and also contracts that at the expiration of that time he will not engage in any similar business during the 3 years following. A breaks both contracts. What relief, if any, is B entitled to ?

What is a trespass ? How does it differ from wrongful conversion ? Give instances of each. A builds a house with eaves projecting over the land of B. Is this trespass, and if so, why ?

Show by examples what is meant by contributory negligence. A is bitten by a dog belonging to B. Is B liable ?

Distinguish between "factors" and "brokers."

Explain what is meant by a contract being "express," "implied," "executed," "executory"; a consideration being "executed," "executory," "concurrent," "contingent."

How does a "general" differ from a "particular" lien, and what persons, in the absence of a contract to the contrary, are entitled to the former ?

How does the responsibility of a bailee in India differ from the responsibility of a bailee in England ?

What is a "del credere" agent, and under what circumstances is a sub-agent responsible to the principal ?

A sells and consigns goods to B of the value of Rs. 12000, B assigns the bill of lading for these goods to C to secure a specific advance of Rs. 5000, made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of Rs. 9000 : under what circumstances, if any, may A stop the goods ?

State the exceptions to the rule that no seller can give to the buyer of goods a better title thereto than he has himself.

B at Agra orders of A at Calcutta 3 casks of oil to be sent to him by railway. A takes 3 casks of oil directed to B to Howrah Station and hands them over to the Company's servants. The casks do not reach B. A sues B for the price. What fact must be ascertained before it can be determined whether B is liable or not ?

When a breach of contract occurs and in the contract a sum is named by way of (i) liquidated damages, (ii) penalty ; state in each case to what the party complaining is entitled.

What are the exceptions to the general rule that agreements unsupported by consideration are void.

State how an agency may be terminated.

Explain the meaning of "Fraud" as used in the Contract Act.

What do you understand by the expression "Ex nudo pacto non oritur actio"?

For an agreement to be binding on the promisee is it necessary that some benefit should be bestowed on the promisor ?

Under the English law what does a contract of sale of specific goods imply ? and what is the law as to the transmutation of property under such contracts ?

What effect had the statutes 29 Car. II, c. 3, and 9 Geo. IV, c. 11, respectively upon such contracts ?

(a) A verbally agrees to sell B, and B agrees to buy a carriage, value £50, delivery to be given that day at B's house, and payment to be made within one month. At the time the agreement is entered into, A in B's presence makes an entry in his sale book of the transaction. A then sends the carriage to B's house and tenders it to B, but B not having room for it that day, does not take delivery, but returns it to A with a request that it should be sent the next day. That night a fire takes place in A's premises and the carriage was insured by A for £25. What are the rights of A and B under the agreement ? Who is entitled to the £25, when paid to A by the Insurance Company ?

What do you understand by the terms "Factor" "Broker," and *del credere* Agent ? and in what way, if at all, do the functions of each differ ?

What used to be the position at common law of a purchaser of goods from an agent who had exceeded his authority, such purchaser taking *bona fide* and without notice of the agent so exceeding his authority ?

Distinguish between the terms "Undue influence" and "Coercion" in the sense in which those terms are used in the Indian Contract Act. What effect have they respectively on an agreement to which the consent of one of the parties has been obtained by means of them ?

(a) A forges his father's (B's) name to certain documents and obtains a loan from a bank upon the security of such documents. The Bank, on discovering the forgery, puts pressure on B without, however, distinctly threatening to prosecute A, and thus induces B to give a mortgage on his property as security for the repayment of the advance made to A. A not being able to repay the amount on due date, the Bank calls upon B to make it good, and, on his refusing to do so, institutes a suit to enforce its mortgage security against his property.

What consideration was there for the agreement between the Bank and B ? Has B any defence to the suit ?

When is the consideration, or object of an agreement said to be unlawful ?



(a) A by two separate agreements promises B and C to drop two prosecutions which he has instituted against them respectively for robbery and house trespass, in consideration of B and C each paying him Rs. 10,000 within six months. A does not attend before the Magistrate at the hearing of the two cases and B and C are discharged for want of evidence.

(b) A promises to obtain employment for D in the public service in consideration of D's paying him Rs. 10,000 out of his pay; the amount to be paid within one year from the time of D's entering such employment. D gets the employment but not through A's agency.

In the above cases, B, C and D refuse to pay A the amounts agreed upon. Can A recover the same by suit? Would it make any, and if so, what difference in the last case if D had got the employment by means of A's agency?

When are goods said to be "in transit"? When may a seller who has parted with goods stop them while they are in transit to the buyer?

Under what circumstances does the seller's right of stoppage cease when the goods have been again sold by the buyer to a third party, and under what circumstances does it still exist?

A, at Calcutta, sells B 300 bales of piece-goods to be delivered at Delhi. B receives 230 bales out of the 300, and while the remaining 100 are on their way up-country by Rail, B becomes insolvent. What rights has A with regard to the 100 bales?

What difference would it make, if any—

(c) If the Railway receipt had been pledged by B with a third party for valuable consideration.

(d) If B had sold the goods (a) *bonâ fide* (b) the buyer knowing of B's intention to become an insolvent.

How does a contract of "Indemnity" differ from a contract of "Guarantee"?

What are the rights and liabilities of an indemnity holder when sued?

C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the Bill, demands payment of it from A, and, on A's refusal to pay, sues him on the bill. A, having practically no grounds for refusing payment, defends the suit; but a decree for the amount of the bill with costs is passed against him. Has A a right to recover any thing, and, if so what, from B?

To what extent has a surety the right to the benefit of securities held by the creditor for the debt for which such surety is liable?

C as surety for B jointly executes a bond with B in favour of A to secure the repayment of a sum of Rs. 1,000 lent by A to B. A, subsequent to the bond having been executed, obtains a mortgage from B for Rs. 1,000 over property belonging to B worth Rs. 5,000 as further security for the bond debt, and afterwards at B's request gives up the mortgage as well as certain shares of the nominal value of Rs. 500 which B had deposited with A as security for the same loan previous to the bond being executed by C. C had no notice of A's holding the shares as security for the loan at the time he executed the bond, nor did he become aware of that fact or of the mortgage transaction till after the shares had been returned to B and the mortgage given up by A.

How far is C discharged if at all? Would it make any difference if C had been aware of the share and the mortgage transactions between A and B at the time they were entered into?

What is a contract of Bailment and what respectively are the duties of the Bailor and Bailee in such a contract?

A bails to B 100 bales of jute value Rs. 25 *per* bale bearing A's private mark, and also 100 maunds of rice 3 Rs. a maund. The bales of jute get mixed with other

bales of jute bailed by C to B, value Rs. 20 a bale and the rice gets mixed in bulk with other rice bailed by D to B value Rs. 2-8 a maund.

What are the respective rights of A, B, C and D ?

What is a "partnership" ?

In what cases may a Court decree a dissolution of a partnership at the suit of one of the partners ?

What are the rights and liabilities of a partner, who is taken into a partnership while a minor, both before and after he has attained his majority, as between himself and third parties with reference to the partnership transactions during his minority ?

Enumerate the different kinds of contracts which may be specifically enforced.

What presumptions is a Court bound to make in an action for the breach of the following contracts :—

(a) a contract for the sale of 100 bigahs of land.

(b) " " 100 bags of linseed.

(c) " " 100 shares in the Bank of Bengal.

When may a Court order a contract in writing to be rescinded at the suit of any person interested in such contract ?

A contracts to convey land to B on a particular day for Rs. 3,000. Before the day arrived, A sells and conveys the land along with some other land to C for Rs. 3,500 and C dies. C before he bought the land from A had knowledge of A's contract with B. Can B compel any one, and if so whom, to specifically perform the contract he made with A ?

Define "sale" and state in what ways it may be effected.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. Has any portion of the oil become the property of B ? Give reasons for your answer.

When are goods deemed to be in transit ? When and in what way may a seller stop goods in transit ?

A sells and consigns goods to B of the value of Rs. 1,200. B assigns the bill of lading for these goods to C to secure a specific advance of Rs. 5,000 made to him upon the bill of lading by C. B becomes insolvent being indebted to C to the amount of Rs. 9,000. Is A entitled under any and what circumstances to stop the goods ?

A, B and C as sureties for D enter into three several bonds each in a different penalty, namely, A in the penalty of Rs. 10,000, B in that of Rs. 20,000, C in that of Rs. 40,000 conditioned for D's duly accounting to E. D makes default to the extent of Rs. 30,000. What are the respective liabilities of A, B and C ?

In what ways may an agency be terminated ? In what cases is an agent not entitled to revoke his agent's authority ?

C advances to B, his tenant Rs. 2,000 on the guarantee of A. C has also a further security for the Rs. 2,000 by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent and C sues A on his guarantee. Has A any defence, and to what extent, to C's claim ? If so, on what ground ?

How is the liability of a surety affected, if at all, by the creditor (1) giving time to the principal debtor (2) forbearing to sue (3) entering into a contract with the principal debtor not to sue and (4) entering into a contract with a third person not to sue. Give reasons for the answers.

When and to what extent, if any, may a principal repudiate the act of an agent who has exceeded his authority ?

A orders of B specific articles of China. B sends these articles to A in a hamper with other articles of China which had not been ordered. Is A entitled to refuse to accept the articles ordered ? Give reasons for the answer.

To what extent is an agreement in restraint of legal proceedings void? Are there any and what exceptions to the general rule?

Define (1) "undue influence" (2) misrepresentation and (3) "consent".

A, a tradesman leaves goods at B's house by mistake. B treats the goods as his own. Is B bound to pay for the goods? Give reasons for the answer.

Define trespass. Who may maintain an action of trespass? In what cases may a person justify an entry upon another's land?

Distinguish between public and private nuisances.

When is a master liable for torts committed by his servants? When is a person liable for damage done by his dog?

### CRIMINAL LAW AND CRIMINAL PROCEDURE.

Under what circumstances is the belief of legal justification a good defence?

Are any persons or things excepted from the operation of the Penal Code?

How are illegal omissions dealt with by the Penal Code?

What are the offences referred to in the Penal Code as being specially "offences against the State"?

When is a person said to commit "extortion"; how does "extortion" differ from "theft"?

A, attempts to pull Z's nose, Z, in the exercise of the right of private defence, strikes A, to prevent him from doing so; A, thereupon provoked to sudden and violent passion, strikes and kills Z, what offence has A committed? Give reasons for your answer.

When is a person said to use "criminal force" to any person?

An accused charged with murder and the theft of a boat, was alleged to have taken a boat from a place where it had been secured by its owner, for the purpose of making good his escape, and after proceeding some distance in it had abandoned it. Is the charge of theft sustainable? Give a reason for your answer.

Where a person is found guilty in the alternative of one of several offences, for which is he to be punished?

What is included under the term "stolen property," and how does stolen property cease to be such?

Under what circumstances is intoxication an excuse for an offence?

What are the offences for which death may be awarded?

How far is it a sufficient excuse for a person charged with an offence to show that at the time he was (1) intoxicated, or (2) not more than 10 years of age?

In what cases is it allowable to take the life of another person in the exercise of the right of private defence of property?

How far is a person liable who has abetted a different offence from the offence actually committed? Give illustrations. A instigates B to beat C. C is in such a state of health that death will probably result. C dies in consequence of the beating. Of what offence is A guilty?

What is an "unlawful assembly"? How far may such assembly become guilty of "rioting" by the act of one of the members thereof?

Show by illustrations the difference between criminal force and assault. A and B play at cards and B wins heavily from A. A loses his temper and strikes B. Thereupon a scuffle takes place in which A in the heat of passion kills B. Of what offence is A guilty?

(1) A takes certain money from B in payment of a debt. A afterwards discovers that B has overpaid him. A continues to keep the money.

(2) A cuts down a tree belonging to B with intent to damage him.

(3) A gives some cloth to a durzee to be made into a coat. The durzee keeps the coat as a security for his debt. A takes the coat out of the durzee's possession. Of what offence has A been guilty in each of the above cases?

How far in a prosecution for defamation is the defence that the statements complained of are true—a sufficient one? A puts a purse into B's pocket with the intention that it may be found there, and that this fact may cause B to be convicted of theft. Of what offence is A guilty?

State what you know about the constitution of the Criminal Courts outside the Presidency Towns.

In what cases may a Magistrate require a person to find security for good behaviour and what is the procedure to be followed?

Compare the procedure in the trial of Summons cases and Warrant cases by Magistrates.

What do you mean by a compoundable offence? Can any of the following offences be compounded, and if so, by whom? Theft; mischief by moving a public landmark; causing hurt; counterfeiting coin; adultery.

Distinguish appeal, reference, revision.

How far is an error in the charge a ground for revision?

To what extent, otherwise than as regards the amount harm which may be caused to an assailant, is the right of private defence restricted by the Penal Code?

Against what acts has a person the right to defend what description of property of what other person or persons?

Distinguish between "assault" and "criminal force".

In what cases may a Court pass a sentence of forfeiture; what sentences affect the acquisition of property and to what extent?

Define stolen property; of what fact is proof rendered immaterial in substantiating a charge of receiving stolen property?

A intentionally pours a jug of water over B intending to annoy him.

A accidentally pours a jug of water over B.

A laughs at B.

In each case B hits A with a stick.

State of what offence, if any, in each instance B is guilty.

What facts is it necessary to establish in order to procure a conviction in a case in which a person is charged with having defamed a person who is dead?

A, a revenue officer, undertakes, in the absence of B, his subordinate, to draw B's pay and place it to B's account at B's bank. A draws the pay and instead of paying it into the bank dishonestly pays a bill of his own with it. Of what offence is A guilty and why?

A sends a challenge to B to fight a duel. They meet and fight and A kills B.

Under what circumstances, if any, would this be culpable homicide not amounting to murder, and under what circumstances, if any, would this be murder?

Compare the elements which constitutes the offences of kidnapping and abduction from lawful guardianship.

State under what circumstances, if any, the High Court can set aside a verdict of acquittal.

What powers are vested in the High Court as a Court of revision, which are not vested in it as a Court of appeal?

When is a person said to abet the doing of a thing?

Give illustrations.

A instigates B, a servant, to help him in stealing from B's master, and B with his master's knowledge and consent, in order to procure A's punishment helps him to remove certain property.

Has any offence been committed? If so, what is it? and by whom has it been committed?

Define "Rioting" and "Affray;" and state how they differ from each other.

State also what is necessary to prove in order to support a conviction for each of these offences.

Illustrate each branch of your answer.

When is a person said to commit forgery, and when to make a false document?

What is a forged document?

Define "Dacoity."

Explain the difference between "Theft" and "Extortion;" and state when they respectively amount to "Robbery."

Give examples.

What offence, if any, has A committed in each of the following cases. Give reasons for your answer.

(a) A pawns his watch with Z and afterwards takes it out of Z's possession without Z's consent, and without having repaid Z what he borrowed from him.

(b) A, by representing some plated spoons, which he knows to be of very inferior quality, to be as good as plated spoons known as "Elkington's A" which is a well known mark in the market of a superior quality, induces Z to pay more for them than he otherwise would, had he known their real character.

(c) A, by threats of taking B's life, dishonestly induces B to sign a blank-stamped paper and give it to him. B signs and gives the paper to A.

(d) B, a tenant of A's, is in debt to him for rent which he won't pay. A takes possession of a cow belonging to B without B's consent and refuses to give it up till B pays the rent.

(e) A, the owner of an estate, sells and conveys it to Z. Subsequently before putting Z in possession, A mortgages it to B without disclosing the previous sale to Z, and gets B to advance money on the security of the mortgage.

Enumerate the exceptions which relieve a person from the responsibility of making imputations or statements, which would but for such exceptions render him liable to a criminal charge under the provisions of the Indian Penal Code.

Enumerate the various kinds of "hurts" which are designated "grievous."

What is it essential to prove before a conviction can be obtained on a charge of voluntarily causing grievous hurt?

A, intending or knowing himself to be likely to permanently disfigure Z's face, gives Z a blow which knocks him down; and in the fall Z breaks his arm. Z's face is not permanently disfigured. What offence has A committed?

When may a police officer arrest a person without an order or a warrant from a Magistrate?

What is the law as to arrests by private persons?

Enumerate the different classes of Courts exercising Criminal Jurisdiction, and state the civil limit of the power of each as to the amount of punishment it may award.

What are the rules to be applied with reference to sentences in cases of conviction for several offences at one time?

State what is the duty of the Judge and Jury respectively in the trial of cases which are tried with the assistance of a Jury.

Illustrate your answer.

State also the procedure to be followed by a Judge of a Sessions Court in cases in which the verdict of the jury is not an unanimous one, or is one with which he disagrees.

State shortly the nature of the provisions contained in the Criminal Procedure Code regarding the transfer of Criminal cases from one Court to another.

Enumerate, as shortly as you can, the offences punishable under the Penal Code which may be compounded; and state by whom they may be so compounded in the cases of adults as well as of minors; and also the effect of such composition.

(a). Explain fully what you understand by the following Preamble to the Indian Penal Code :—

“Whereas it is expedient to provide a general Penal Code for British India. It is enacted as follows :”—

(b). To what Territories did the Code originally extend, and in what places is it now in force?

Define “Public Servant :” What are the privileges and liabilities of a Public Servant under the Indian Penal Code?

(a). In what cases may transportation be awarded instead of imprisonment?

(b). Section 57 says “——— transportation for life shall be reckoned as equivalent to transportation for twenty years.” Should a man, transported for life in January 1883, be released in January 1903? If not explain the use of Section 57.

What is the “right of private defence,” how far does it extend, when does it commence, and how long does it continue?

Define “Culpable homicide” and “Murder”, and distinguish between “Murder” and “Culpable homicide not amounting to murder.”

Enumerate the “offences against property” punishable under the Indian Penal Code. Wherein do they all resemble each other? Classify them according to the nature of the property (moveable, immoveable or both) to which they apply. Take any three of them and state clearly the points of resemblance and difference between them.

Mention some offences under the Indian Penal Code where the attempt to commit an offence or the attempt to commit an act constituting the offence is, of itself, the offence attempted to be committed.

(a). State the points of resemblance and explain the difference between “fabricating false evidence” and “making a false document.”

(b). Is there any provision in the Indian Penal Code for the punishment of “making a false document”? If there be none, explain the use of defining it.

(c). Explain the circumstances under which a man’s signature of his own name may amount a forgery.

Examine the following cases and say of what offence, if any, A is guilty in each of the first three cases (*viz.* a, b, and c) and of what offence or offences are A, B, and C respectively guilty in each of the next three cases (*viz.*, d, e and f). Give reasons for your answer.

(a). A, a peon of a Government College, believing in good faith that he has a right to whip any one who comes near the College gates, strikes Z with a whip for doing so.

(b). A, in a state of intoxication sees Z enter into his house and, fancying that Z came there for the purpose of committing a theft, strikes him a blow with a thick stick which makes him senseless at the time so as to necessitate his removal to the nearest hospital. Twenty-one days after his removal to the hospital Z dies in consequence of bad treatment.

(c). A, with the intention of causing Z's death, asks Y, a child of five years of age, to put some poison into the food of Z, and gives him the poison for that purpose; Y, in consequence of the request, puts the poison into Z's food, but Z, on account of being called away to some other place, does not take the food and is, therefore, saved from being poisoned.

(d). A apprehending an attack from B and his party who wanted to set fire to his house, asks C, D and four other persons to come to his help for the protection of his property; they all come armed, C and the four other persons with sticks and clubs, and D (who had some grudge against B) comes armed with a sword; B with E (who was armed with a sword) and two others, who were armed with clubs, attack A and his party. They have a fight in which E kills D, and A, in his attempt to save D, kills E.

(e). A, knowing that Z executed a bond in his favor on the 1st of January 1878 for money which Z borrowed from him on that day with a promise to repay it within one year, alters the "1st" into "21st" in order to save his just claim from being barred by limitation. He does this on the 6th of January 1882, and as only one of the attesting witnesses to the bond, named C, was living at the time, he, with the intention of proving the bond by two attesting witnesses, induces B to put his name to the bond as a witness, and institutes his suit on the 19th of January 1882. B refuses to give his evidence in the case in support of A's claim. C, having no reason to suspect that the date had been altered or that B's name had been subsequently put in, gives his deposition in Court in A's favor, where, after looking at the bond to refresh his memory, he says, that the bond was executed on the 21st of January 1878 and that B was present at the time of the execution.

(f) B makes a hole through the wall of A's house for the purpose of committing a theft; C, to whom A owed some money, but who could find no access to him on account of his doors being always locked against his creditors, sees the hole and enters into the house through it, and demands his money of A; A gets annoyed at it, holds C by the neck and turns him out of the house. B who had just introduced his head through the aperture leaves the place for fear of detection.

(a) What are Summons cases and what are Warrant cases? And wherein does the procedure to be observed in the trial of one class of cases differ from that of the other?

(b). When may the accused be discharged by the Magistrate (i) holding a preliminary inquiry in a case triable by the Court of Session; (ii) trying a Warrant case? What is the effect of the discharge in each case?

(c.) In what cases does the discharge, or the dismissal of a complaint, operate as an acquittal of the accused person?

Describe a trial before a Court of Session by Jury, explaining clearly the respective duties of the Judge and the Jury.

Mention the cases in which no appeal is allowed. In what cases is the appeal to be confined to a question of law?

What are the powers of the High Court as a Court of Revision?

(a). When, by whom, and in what cases is a charge to be framed? What should it contain; and how far would an error in the charge affect a conviction had upon it?

(b). With what offence or offences may A be charged, and how may he be punished, if, while robbing B, he voluntarily causes hurt to C?

What are the offences for complaints of which previous sanction should be obtained before they could be entertained: when, by whom, and in what manner should such sanction be given?

## 'CIVIL PROCEDURE EVIDENCE AND LIMITATION.

In what respect does the judgment in a previous suit bar subsequent litigation between the same parties? Give an example of an incidental issue.

Under what circumstances does the Code allow an order for *substituted service* to be passed? How is such service effected? State briefly the principal provisions of the Code with regard to the production of documents in support of a suit at its different stages?

Define "Decree." How and within what time may *ex parte* decrees be set aside? Where the judgment-debtor has no other property but a decree for land in another district, what would be the procedure for attaching that decree? How should the creditor proceed after that attachment?

What is meant by the expressions "Mesne profits" "Interpleader suit," "Injunction" and "Certified purchaser." Under what circumstances may temporary injunctions be granted? What is the provision of the Code as regards disputes between a certified purchaser buying Benami and the beneficial owner under the purchase? How does that provision affect the rights of members of a joint family when property is purchased by one of them, in his own name, by the use of the family funds? Give reasons for your answer.

Upon what grounds may an Award of Arbitrators be set aside? Under what circumstances is an appeal allowed from an appellate decree? Mention a case in which an appeal lies directly to the High Court from an order of a Munsiff.

The term "admission" has been applied to statements made by persons other than a party himself. Who are those persons? When should the confession of an accused person be rejected as irrelevant? Is an admission conclusive? If so, when?

What judgments other than judgments *inter partes* are admissible in evidence? Which of them, if any, is conclusive? What pleas may be taken to avoid a judgment?

What is the rule for determining the relevancy of evidence of character in criminal proceedings? How is the term "character" explained with reference to this rule?

In what cases are opinions of experts relevant? In what ways may opinion evidence be admitted under the Indian Evidence Act?

What is "secondary evidence"? Under what circumstances may secondary evidence be given of the contents of a document?

It is proved that a document is lost. Would an oral account of a machine copy of the original be admissible as evidence of the contents?

It is alleged that a document is destroyed. Is any proof of the alleged destruction required if there be an oral *admission* of the contents?

Under what circumstances may suits brought after the prescribed periods of limitation? What are the essential requisites of a written acknowledgment under section 19 of the Limitation Act?

What is the period of limitation and how is it computed in each of the following cases?

- (a). Suit to set aside a sale for arrears of Government revenue.
- (b). Suit for money due on a registered bond.
- (c). Suit for resumption of Lakhiraj land.
- (d). Application for execution of a decree of a subordinate Judge.

Describe the class of rights which are extinguished at the expiry of the period of limitation. Give two instances where the right is not so extinguished.

Define decree, order and judgment. What is the difference between a decree and an order so far as appeals are concerned? In what cases may a Court amend a decree, passed by itself?

What is meant by the expression *cause of action*? Explain the law relating to *res adjudicata* as laid down in the Code of Civil Procedure.



Mention the cases in which a plaint *shall* be rejected by the Court. Does the order rejecting a plaint preclude a fresh suit in respect of the same cause of action? Is such order appealable?

What course is open to a defendant against whom an *ex-parte* decree has been made, for getting the same set aside? Is he entitled (1) to appeal against such decree and (2) to apply for a review of judgment? State circumstances under which an application for a review of judgment may be made.

Mention shortly the steps which the holder of a money decree is entitled to adopt in order to bring to sale the immoveable property of his judgment-debtor. Under what circumstances may such sale be set aside?

On what grounds may an arbitration-award be set aside?

Under what circumstances may a judgment-debtor apply to the Court to be declared an insolvent? State the particulars that he must prove to the satisfaction of the Court before he can be declared an insolvent. What is the effect of an order discharging the insolvent?

Define evidence, and explain what you understand by the expression secondary evidence of the contents of a document. In what cases is such secondary evidence admissible?

Under what circumstances is oral evidence excluded by documentary evidence? In what cases may evidence be given to explain a document?

Distinguish between presumptions of law and presumptions of fact and illustrate by examples how such presumptions may affect the burden of proof. What do you understand by the term *estoppel*?

What are public documents? How far do they require to be proved? What is the probative force of entries in books of account?

How does legal disability affect the period of limitation prescribed for a suit? Give instances.

In what cases does the part-payment of the principal of a debt entitle the creditor to a new period of limitation? Mention the kind of suits which cannot be barred by any length of time.

What is the difference between primary and secondary evidence, and in what cases is secondary evidence admissible?

When is opinion admissible in evidence?

Is oral admissible to vary the terms of a written contract?

What fact or facts must be proved before evidence can be given to prove a statement made about a relevant fact by a person who is not before the Court, when such statement is against pecuniary interest of the person making it?

A sues B for possession of immoveable property. B admits the right of A's predecessor in title, but pleads that before the title of A could accrue, the property had passed to C from whom B derived title. On whom does the burden of proof lie? If B simply denies A's title, on whom does the burden of proof lie?

When and under what conditions may a judgment in a previous suit be used as a bar to the trial of a subsequent suit?

A lets a zemindari to B at an annual rental of Rs. 2,000. The rent for the years 1288, 1289 and 1290 being due, A sues for the rent of the years 1288 and 1289 only. Can A afterwards sue for the rent of 1290?

What is an interpleader suit? Can agents sue their principals and tenants sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claims through such principals or landlords? Give reasons for your answer.

On what grounds can an application for review of judgment be made?

When may a Court appoint a receiver of property which is the subject of a suit ? Does an appeal lie against an order appointing a receiver ?

In what way and against whom does fraud affect the computation of a period of limitation in suits and applications ?

What is the period of limitation and how is it to be counted in each of the following cases, *viz* :—

(a). Suit by a person excluded from joint-family property to enforce a right to share therein.

(b). Suit by a mortgagee for foreclosure.

(c). Suit by a Mahomedan for deferred dower.

(d). Application for the execution of a decree of a Civil Court not established by Royal charter.

What is the doctrine of *lis pendens* ? A brings a suit against B for possession of immoveable property. When the suit is being actively prosecuted, B sells the property to C who has no notice of the suit. A ultimately obtains a decree against B. Can C effectually resist A's obtaining possession either in execution of the decree, or by a suit ?

Within what time should an application to set aside a sale of immoveable property held in execution of a decree be made by the judgment-debtor, and what fact or facts must be proved for getting a sale set aside ? On what ground or grounds can a purchaser get the sale set aside ?

What particulars must a plaint contain ? Under what circumstances may a plaint be rejected or returned amended ? When should it be rejected ?

A on the 1st January 1883 sold B at Calcutta 50 bales of grey shirtings at Rs. 200 per bale, delivery to be given and taken within 30 days, and payment to be made within 45 days after delivery, otherwise interest to be paid by B at the rate of 12 per cent. per annum. A, who was a European merchant, died on the 21st August 1883, and C and D, the executors under his will, are desirous of recovering the amount due under the above contract from B. B took delivery on the 25th January 1883 ; and has not up to date paid the money, though a demand was made on him by A before his death. What steps should C and D take ?

Draw the necessary plaint in a suit to be filed on the 25th January 1884 for the recovery of the money, leaving blanks if the facts are not sufficiently stated for the purpose of completing such plaint.

Under what circumstances does the service of a summons on one of several co-defendants constitute good service on all ?

When can a Court order substitute service ? and how should it usually be effected ?

When the defendant, is in jail or a resident outside the limits of British India, how is service to be effected ?

When, and in what cases may a Court grant a temporary injunction ? and how can such injunction be enforced ?

Can an injunction as a rule be obtained *ex-parte* ?

In what cases may a Court, which has passed a decree, send it for execution to another Court ? What documents must be sent to such other Court for that purpose ?

In what cases only will a second appeal lie from a decree passed in appeal by a Court Subordinate to the High Court ?

What is a " Fact ? " When are facts said to be " relevant ? "

Mention some of the facts of which a Court is bound to take judicial notice ; and explain what you mean by the term "judicial notice."

What is the meaning of the terms "Primary" and "Secondary" evidence as applied to the proof of documents ? What does the latter term include ?

In what cases only may the existence, condition or contents of a document be proved by secondary evidence ? State in each particular case the nature of the secondary evidence that is admissible.

Under what circumstances are confessions made by accused persons inadmissible in evidence against them in a criminal proceeding ?

X, Y and Z are charged with murder. X, while in the custody of A, a police officer, (Y and Z not being present) says to B, a friend of his, "The charge against Y, Z, and myself is a true one. The murder was committed with a knife which I hid under the bed in D's house." A, having overheard X's statement, goes and finds the knife where X said it was.

X, Y and Z are being tried together. Can any portion of the above statement made by X be used in evidence against any, and if so, against which, of the accused ?

Supposing X, Y and Z were tried separately, what effect would that have on the admissibility or otherwise of X's statement as against Y and Z ?

What is meant by Estoppel ?

(i). A sues X, his tenant under a 3 years' lease to eject him for non-payment of rent ; at the time of the institution of the suit, A is a party to another suit in which his title to the land leased to X is in dispute.

(ii). A bill purporting to be drawn by A is accepted by X. X is sued on the bill.

(iii). A bails certain goods to X. X delivers them over to B instead of to A, and A sues X for the value of the goods.

In the above three cases what defences could X legally raise ? What facts is he not at liberty to put in issue ?

What are the provisions of the Limitation Act with reference to the effect of acknowledgments on the period of limitation ?

How far do the provisions of that Act differ from those of the Evidence Act with regard to the proof of acknowledgments when they are contained in a written document ?

A owes B Rs. 1,000 and says to him, "yes, it is true I owe you the money ; but it is not payable till next week : I decline to pay you now, but will pay you then."

Is that a sufficient acknowledgment to create a new period from which limitation would run ? Would it be a sufficient acknowledgment if a similar statement had been contained in a letter written by A to C with reference to the debt due by A to B, C not being B's agent for the purpose of collecting the debt ?

What is the period of limitation, and when does it begin to run in suits of the following description, viz :—

- (a). For compensation for false imprisonment.
- (b). For compensation for Trespass upon immoveable property.
- (c). For specific performance of a contract.
- (d). For compensation for libel.
- (e). By a Hindu for arrears of maintenance.

Who may be joined (1) as plaintiffs (2) as defendants in a suit ? When may one person sue or defend on behalf of other persons in the same interest ? What is the rule as to the effect of misjoinder ?

When may a sale of land in execution of a decree be set aside?

When and how may decrees of Court established in Native States by the authority of the Governor-General in Council be executed in British India?

A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree. A sues B for libel. A dies. Does the suit in either case abate? Give reasons for the answer.

How must suits by a minor be instituted? In what cases must a guardian *ad litem* be appointed? Who may and who may not be appointed guardian *ad litem*? What are the duties of such guardian?

Where a reference is made in a suit to arbitration to two or more arbitrators, what provision may be made by the Court for a difference of opinion between or among the arbitrators?

When may one of several plaintiffs or defendants on appeal obtain a reversal or modification of a decree in favour of all the plaintiffs or defendants?

To what restrictions is the rule as to amendment of plaints subject? What is the effect of a plaintiff omitting to sue for or intentionally relinquishing any portion of his claim?

Under what circumstances may a Court trying a suit or appeal or executing a decree make a reference to the High Court? At what stage may reference be made?

In a suit relating to any business against a person who does not reside within the local limits of the jurisdiction of the Court, upon whom may the summons be served?

Explain the following terms—

- (1) relevant.
- (2) evidence.
- (3) document.

What facts are relevant where the question is as to the existence of any right or custom?

What statements are treated as admissions by the Evidence Act? Against whom may admissions be used? When may they be used by or on behalf of the person who made them?

In what cases are opinions of third person relevant? When may evidence be given of the bad character of an accused person?

May a witness either in a Civil or Criminal proceeding be excused from answering any question as to any matter relevant to the matters in issue upon the ground that the answer will criminate or tend to criminate him?

## HINDU AND MAHOMEDAN LAW.

Enumerate the different schools of Hindu Law, and explain their divergence on the subject of Adoption by a widow. How do the rights of a *Kritrima* son differ from those of a son adopted in the *Dattaka* form?

Define *Sakulya*, *Samīnodaka* and *Bandhu*. How is the word *Sāpinda* explained in the Bengal and the Benares law of inheritance respectively? Show some instances where this difference of interpretation has varied the succession under the two schools.

What is "Unobstructed (*Apratibandhu*) heritage?" What objection would a Dayabhaga lawyer make to this expression? How would he define "Partition?"

How is joint family property defined in Appovier's case? How far are the expressions "joint tenants" and "survivorship" applicable to Hindu law? Mention some of the incidents which distinguish a Mitakshara joint family from a joint tenancy.

What are the main principles upon which the father's alienation of joint family property is upheld against the claim of the sons, under the Benares law ?

[N. B.—In answering questions (a), (b), and (c) the Benares and the Bengal schools of law should both be considered.]

(a). A dies, leaving a brother and a deceased brother's son, both living with him as a joint family at the time of his death. What is the right of the nephew ?

(b). A being separate, dies leaving two nephews by one brother and three nephews by another. Do the nephews succeed *per stirpes* or *per capita* ?

(c). A dies leaving a brother's daughter's son, and a grandson of his great grandfather's father. Who would succeed to his estate ? Give reasons for your answer.

(d). A, governed by the Dayabhaga, died leaving three widows, a son by his first wife, and two sons by the second. The third wife is childless. Upon a partition between the three sons, what rights would the widows be entitled to ?

How is "Stridhana" defined by the Rishis ? What is the right of a Hindu widow over immoveable property bequeathed to her by her husband ? What are the points to be considered in ascertaining the course of descent of Stridhana property ? Enumerate in order of precedence the first four heirs to *Ayautuka* Stridhana of a woman dying without issue.

What are the causes of exclusion from inheritance, according to the Smritis ? What alteration has been effected by the Legislature in this part of the law ?

Enumerate such of the "Sharers" under the Mahomedan law, as are not liable to total exclusion. Is it always true that, if one is related to the deceased through another, he is excluded from his share by the other ? If not, what are the exceptions ?

Explain "Increase" and "Return" under the Soonee law. Mention the chief points on which the Shia law differs on this subject. Illustrate your answer by examples.

Define *Huk Shoofa* ? By whom and under what circumstances can this right be claimed ? What are the ceremonies prescribed for enforcing the right, and the devices adopted for avoiding it ;

What are the essentials of a valid gift under the Mahomedan law ? When may a gift be resumed ; What is the distinction between a *Hiba ba Iwuz* and a *Hiba bil shart ul Iwuz* ? What is the law as to gifts by a Mahomedan on his death-bed ?

Define *partition*. Is there any and what property not liable to partition ?

A Hindu dies intestate leaving a widow, two sons A and B and their wives C and D, two sons of A and three sons of B, four sons of a deceased son E and his widow and one married daughter and two sons of a deceased daughter. Supposing the deceased Hindu to have been governed by the Mitakshara school, who among the aforesaid survivors will share upon the partition of his estate and what will be the extent of their respective shares ? What would be the difference if he were governed by the Bengal school ?

Describe the nature and character of a joint Hindu family. What are the rights of a Mitakshara father to his ancestral property as against his sons ?

What estate does a Hindu widow take in the property inherited by her husband ? In what cases may a purchaser from her acquire an absolute right to the property so inherited by her ? What are her rights to the accretions or accumulations of the estate inherited by her from her husband as distinguished from those to the corpus thereof ?

What are the essential conditions of a valid adoption in the *Dattaka* form (1) among Brahmins and (2) among Sudras ? What is the difference between a *Dattaka* and a *Kritima* adoption ?

State the principles which govern the law of succession (1) in the Bengal school and (2) in the Benares school. Is a person who becomes blind some years after his birth, but before succession opens out, excluded from inheritance?

Explain fully the law relating to the succession of full brothers and half brothers. Does an undivided half brother exclude a divided full brother?

A Hindu dies leaving a nephew who is the son of his full brother and two nephews who are the sons of his half brother. Which of these three nephews will inherit his estate and what will be their respective share therein supposing (1) all of them were joint with him, (2) all of them were separate from him, and (3) some joint with, and the rest separate from, him at the time of his death?

What are the essential requisites to make a gift valid under the Mahomedan law? In what cases is delivery of possession unnecessary? What are the restrictions to a gift on death-bed?

What is pre-emption? Who may claim pre-emption? What forms must be observed by a person claiming a right of pre-emption to perfect his title?

What is the difference between a sharer, a residuary and a distant kindred under the Mahomedan law? Enumerate the persons who may come in as sharers.

(a). A Mahomedan dies leaving his mother, two widows, three sons and four daughters. Distribute the estate of the deceased among the aforesaid survivors.

(b). A Mahomedan dies leaving her husband, father, four sons and two daughters. Divide her estate among the aforesaid survivors.

What is a religious endowment under the Mahomedan law? What are the incidents of endowed property?

Explain the text.—“To the nearest *sapinda*, the inheritance belongs” and show how the different interpretations of the word *sapinda* have caused difference in the order of succession in the two leading schools of Hindu Law.

Describe accurately the nature of the estate taken by a childless Hindu widow who succeeds to her deceased husband's property. Wherein does it differ from the estate of a tenant for life in English Law?

Define “unobstructed heritage,” and show how and in what cases it affects the power of alienation.

What is the principle of law expressed in the Dayabhaga Chap. I., Vol. 21 by the phrase “relinquishment in favour of the donee, who is a sentient person”? What in Hindu Law are the exceptions to the rule? What are the provisions of the Indian Succession Act and the Transfer of Property Act in this respect?

What are the different kinds of Stridhana according to the Dayabhaga?

Is the adoption of an only son valid? Give reasons for your answer.

B, a Hindu dies intestate leaving him surviving two sons of a deceased brother, A, and three sons of another deceased brother, C. What is the share of each of these brothers' sons in the property left by B? Would it make any difference if A had been a son by adoption before the birth of B and C?

Compare the—“estate in joint-tenancy” in English Law with the state of co-widows in Hindu Law.

A person domiciled in India dies intestate, leaving him surviving his father, mother, one brother, and two sons of another deceased brother. To whom and in what shares will his property pass, supposing—

- (a) that he is a Sunni-Mahomedan.
- (b) that he is a Shia-Mahomedan.
- (c) that he is a Hindu governed by the Mitakshara Law (Benares School).
- (d) that he is a Hindu governed by the Dayabhaga.
- (e) that he is a Christian Native of India.

A woman governed by the Dayabhaga dies leaving her surviving a maiden daughter, a son and a married daughter. Who will succeed her as regards property given to her by her husband after marriage.

What is *shoofa* or *pre-emption*? What formalities must be observed by the pre-emptor to assert his right in a Court of Justice?

Who are the sharers according to the Mahomedan Law (Sunni) and what are their respective shares?

What are the limits to the testamentary power of a Mahomedan?

A Mahomedan dies leaving him surviving a widow, two sons and three daughters. How is the property to be distributed?

N. B.—In answering these questions, state, where necessary, the difference between the Mitakshara and the Dayabhaga school of law.

Describe the general character of the *Joint-family*.

What status is assigned to the widow by the Dayabhaga and the Mitakshara respectively? Does that circumstance afford any clue to the relative age of the two Codes? Give your reasons.

To what extent if any, is the father's right over his property affected by the birth of a son?

"Among grandsons by different fathers, the allotment of shares is according to the father."

Explain and illustrate the text.

Is that so in Mahomedan law?

Under what circumstance, if any, may a Hindu be said to have changed his school of law by a change of residence?

Which of the relations of a deceased proprietor are entitled to maintenance? To what extent, if any, is the claim for maintenance a charge on the property?

According to the principles of Hindu law, which of the two is the source of greater benefit, a son's daughter or a daughter's daughter? And why?

In the order of succession, who takes the property in the first instance, the mother and the father? And on what ground?

(i). A, a Hindu of Bengal, dies leaving—

- (1) a married daughter without issue.
- (2) a daughter's son.
- (3) a son's unmarried daughter.

Explain the nature of the interest of each or any of them in A's estate.

(ii). A, a Hindu, dies leaving—

- (1) an adopted son.
- (2) a son born after adoption.

How should A's property be divided between (1) and (2)?

(iii). A, a Hindu dies leaving—

- (1) a brother's daughter's son.
- (2) a sister's son.
- (3) a daughter's adopted son.

How do they stand to each other in the order of succession to A's property? Who succeeds A? Cite the leading case on the point.

Define marriage. Can a Mahomedan marry his wife's sister? Explain your answer. To what extent, if any, does the Mahomedan Law permit marriage with persons of other religions?

Compare a Mahomedan guardian with a Roman Curator. How far has the mother the right to the custody of her children?

What is the status of a *Mutawalli* or superintendent of endowment under the Mahomedan Law?

Explain the nature and operation of a Mahomedan will.

When may an heir become also a legatee?

Lay down the *general* rule which governs the order of succession among relations of the whole and the half blood among the *Shia* sect.

Under the Mahomedan Law, who are those relations that must succeed in any event?

(i). A, a Mussulman, dies leaving—

(1) a father.

(2) a mother.

(3) two daughters.

Divide the estate of A among (1), (2) and (3).

(ii). A, a Mussulman, dies leaving—

(1) a husband.

(2) a father.

(3) a mother.

(4) a daughter.

How will you distribute the inheritance among (1), (2), (3) and (4)? Do you notice any peculiarity?

What are the different schools of Hindu Law prevalent in India? In what places do they respectively prevail? What are the books of authority recognized by each school; and which of them is the earliest, and which the latest?

(a) State some of the principal points of resemblance and difference between them, as regards partition, succession, and right of alienation.

(b) What is succession by survivorship? By which of the schools is the doctrine of succession by survivorship still recognized, and to what extent?

Who are the *Sapindas*, *Sagatras* and *Bandhus*? When, upon what principles recognized by Hindu Law for regulating succession and inheritance, and in what order do they come in as heirs of a deceased Hindu according to the different schools?

In what cases and to what extent is the rule of primogeniture observed by the Hindus? Upon what is the rule based?

Does the Hindu Law recognize any title by escheat? If so, when does it come into operation (i) in the case of the property of a deceased Brahmin, and (ii) in any other case? How far have the doctrines of Hindu Law on this point been recognized by the Privy Council?

What constitutes *Stridhun*? What powers has a woman upon her *stridhun*, and how is the succession to it regulated according to the different schools of Hindu Law?

What is the difference between *taking per stirpes* and *taking per capita*; and who amongst the persons named below (in case they be heirs at all) take *per stirpes* and who *per capita*, 1st, in the case of the property of a deceased male, and Secondly, in the case of a deceased woman leaving *Stridhun*:—(i) sons' sons, (ii) daughters' sons, (iii) brother's sons, and maternal uncles' sons?

Who will succeed A or inherit his property in each of the following cases according to the Mahomedan Law, and the different schools of Hindu Law respectively? If more than one person inherit, state the share of each.

(a). A dies leaving his father and mother, 3 sons, 3 grandsons by a son who died during his lifetime, 2 other grandsons by another son who also died during his lifetime, a widow, 2 daughters, 2 grandsons, by a daughter pre-deceased, and 2 brothers who were living with him joint in food and estate.

(b). In the above case supposing A to have left no sons.

(c). In the same case supposing A to have left no sons, nor grandsons by sons who died before him.



(d). In the same case supposing A to have left no sons, nor grandsons (as above), nor a widow.

(e). A dies leaving a half-brother who was living with him joint in food and estate, and another half-brother and a brother living separate and having no joint property with him.

What are the grounds of exclusion from inheritance under the Hindu and the Mahomedan Law respectively? And how far has the Hindu Law on the subject been modified by the Legislature?

(a). Compare the rights of a Hindu widow with those of a Mahomedan as regards inheritance, re-marriage, dower, and power of alienation.

(b). What is the position of the daughter (maiden, married, widowed) according to the different schools of Hindu Law, and the Mahomedan Law respectively?

(a). Who are the sharers and who the Residuaries according to Mahomedan Law? Mention the circumstances under which the respective shares of the mother, the father, the widow, the husband and the daughter, may vary.

(b). Who should in all cases get shares; and in what instances do certain sharers become Residuaries?

(c). Enumerate the different classes of District Kindred.

How is Marriage defined by Mahomedan Law, what are its essentials, conditions, and effect; with whom may it be contracted and with whom is it unlawful for a man to contract a marriage?

Define *Shooftaa*. With respect to what property does it take effect; and how, when, and by whom may it be claimed?









